



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: April 25, 2005

TO : EC

Through: Todd A. Stevenson, Secretary, OS *TS*

FROM : Martha A. Kosh, OS *mak*

SUBJECT: Proposed Ban for Sale for Full Size ATV's to 16 and Under

ATTACHED ARE COMMENTS ON THE CA 05-1

<u>COMMENT</u>	<u>DATE</u>	<u>SIGNED BY</u>	<u>AFFILIATION</u>
CA 05-1-1	01/13/05	George Hilton	14347 State Route 220 Waverly, OH 45690
CA 05-1-2	02/15/05	Kevin Hughes	76 FJ40 TLCA 5985 BBRC Ventura County, CA
CA 05-1-3	02/24/05	Jeff Riley	Jriley@levelleng.com
CA 05-1-4	03/15/05	Kyran Quinlan M.D., M.P.H. Clinical Assoc. Professor Pediatrics	The University of Chicago Dept. of Pediatrics 5841 S. Maryland Ave MC6082 Chicago, IL 60637
CA 05-1-5	03/15/05	Kathy Monroe M.D.	The University of Alabama at Birmingham School of Medicine 1600 7 th Ave Birmingham, AL 35233
CA 05-1-6	03/15/05	P. Letoruneau RN	Baystate Medical Center Children' Hospital Dept of Surgery and Trauma Services Springfield, MA 01199
CA 05-1-7	03/15/05	Julie Philbrook RN, MA Trauma Prevention Specialist	HCMC Trauma Services 701 park Ave, 09 Minneapolis, MN 55415

Proposed Ban for Sale for Full Size ATV's to 16 and Under

CA 05-1-8	03/15/05	Medical Professionals	Natural Trails & Waters The Wilderness Society 1615 M St, NW Washington, DC 20036
CA 05-1-9	03/15/05	Richard Schwend MD, Associate Professor of Orthopaedic Surgery, Rehabilitation, and Pediatric, Chief Pediatric Orthopedics	The University of New Mexico Health Sciences Center 1127 University Blvd, NE Albuquerque, NM 87102
CA 05-1-10	03/15/05	Barbara Gains, MD Director of Trauma And Injury Prevention Asst Professor Of Surgery	Children's Hospital of Pittsburgh 3705 Fifth Ave Pittsburgh, PA 15213
CA 05-1-11	03/15/05	Leonard	P.O. Box 733 Reserve, NM 87830
CA 05-1-12	04/02/05	Tom & Sue Rabe (group of parents)	Turner, OR
CA 05-1-12a	03/20/05	Tom & Sue Rabe	Turner, OR
CA 05-1-13	03/23/05	Ken Pulford	Bbchevelle@aol.com
CA 05-1-14	03/27/05	Ann Kirby	Annmkirby@aol.com
CA 05-1-15	04/04/05	Warren Prunella	10911 Wickshire Way Rockville, MD 20852
CA 05-1-16	04/05/05	Terry Monroe Beth Monroe	proracer23@netzero.net
CA 05-1-17	04/06/05	Jack Bellaire	465 Kaleb Mark Dr. Lyman, SC 29365
CA 05-1-18	04/06/05	Dave Eaton	eatonpark@netzero.net
CA 05-1-19	04/13/05	John Perkins	John.Perkins@grace.com
CA 05-1-20	04/14/05	Wendy Strange	wstrange@gtti.net
CA 05-1-21	04/14/05	Carol P-Nelson	13713 Valley Dr. Rockville, MD 20850
CA 05-1-22	04/19/05	Bryce Eddy	beddy@fs.fed.us
CA 05-1-23	04/19/05	Art & Charlie	Artandcharlie@aol.com

Proposed Ban for Sale for Full Size ATV's to 16 and Under

CA 05-1-24 04/21/05 Ismael Trujillo
Ismael.Trujillo@BellSouth.com

CA 05-1-25 04/22/05 Michael Wiegard Eckert Seamans Cherin &
Mellott, LLC
1747 Pennsylvania Ave, NW
Suite 1200
Washington, DC 20006

CA 05-1-26 04/22/05 Lindsey Johnson lindsey@pirg.org

ADP
Comment

George & Sharon Hilton
14347 State Route 220
Waverly, OH 45690

Jan 13, 2005

RECEIVED - 1 A 9:56

To Whom it may concern:

Please read the article about
the 2 teens killed in this
ATV accident on X-mas eve.

Would the agency please consider
action in the following manner?

- 1) - ban all ATV future sales
- 2) - pass federal legislation
prohibiting use by anyone not
licensed to operate an ATV
- 3) stop anyone under 18 from
operating an ATV

George Hilton

The Advents

Two teens killed in inner tube accident

HILTON
PORT WILDERNESS TRL
4510 N
VISTA FL 32830-8415

7456905043 2105 03 01/05/05

120

ATV comment 2
Stevenson, Todd A.

From: Chairman Stratton
Sent: Tuesday, February 15, 2005 9:03 AM
To: Stevenson, Todd A.
Subject: FW: Age rules for ATV's -- BAD

Lizzy Gary

Exec. Assistant to the Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
(301) 504-7884
(301) 504-0768 fax
egary@cpsc.gov

-----Original Message-----

From: MUSEmech@aol.com [mailto:MUSEmech@aol.com]
Sent: Monday, February 14, 2005 11:08 PM
To: Chairman Stratton
Subject: Age rules for ATV's -- BAD

Dear Mr. Stratton:

I am writing you to express my dissatisfaction with the current standards by which ATV's are classified for age groups. While it is heartening in spirit, your agency has negated the more important safety feature, the parent.

I have ridden ATV's for many years and have fruitlessly searched for an ATV that my son won't outgrow in weeks until he turn's 16, at which point he can ride anything?! Have you looked at a 90cc ATV and compared it to a 650cc one? That is the possible transition. My daughter, now 19, had completely outgrown her Suzuki 80cc machine by 13, it could barely move her 90lb body on hills or sand and became a real safety concern based on it not being able to get out of it's own way. Needless to say, the rules could take much of this into account. However, beyond complaint I offer a reasonable solution.

SOLUTION: Use weight/height for compliance. Allow the manufacturers to recommend the safe size rating and range for each ATV they design and manufacturer. Take into account experience and adult supervision. If I'm not safely training my child to ride responsibly, give me a ticket, but don't give me one for putting 130lb, 14 year old on something bigger then 90cc.

Bottom-line, I'm a responsible parent and don't need, want, nor approve of the federal governments (CPSC) current rules in regard to ATV age requirements. Please find a better way of managing this in the spirit it was intended. We understand, you can't outlaw stupidity, but at least manage it better. Thank you for your time,

Sincerely,

Kevin Hughes
76 FJ40 TLCA 5985 BBRC
Ventura County, CA
805-488-4845

2/15/2005

Stevenson, Todd A.

ATV ban

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From: Leland, Elizabeth W.
Sent: Thursday, February 24, 2005 9:35 AM
To: Stevenson, Todd A.
Subject: FW: Meeting information / proposed ban for sale of full size atv's to 16 and under

Todd,
Here is a comment re: the upcoming ATV meeting -- it should be filed with public comments, right? Elizabeth

-----Original Message-----

From: Jeff Riley [mailto:jRiley@levelleng.com]
Sent: Wednesday, February 23, 2005 7:12 PM
To: Leland, Elizabeth W.
Subject: Meeting information / proposed ban for sale of full size atv's to 16 and under

Dear Elizabeth,

Would you please provide more information on purpose of the meeting to ban the sale of full size ATV's to those 16 and under.

I am baffled that there is this feeling of those out there to impose more useless regulatory garbage upon us. I also believe that there should be modifications to what is already a ridiculous set of rules regarding this issue. Obviously those doing this have no clue to the size and abilities of our youth. When a 150 lb kid at 11 years of age is required to ride a 50cc kiddy quad. When a 180lb 15 year old is required to ride a 90 cc machine that he doesn't fit because he's physically to big. And for Example my own son which is not all that big, but very talented and educated in the sport. He has been riding these bigger machines for many years and is currently 16, finally (legal) by these crazy standards. The powers that be, will let the youngsters do most other sports without this kind of silly imposition including riding any size two wheel motorcycle. Unfortunately these attacks are by those that have never been around to share in such a wonderful family sport. My son and I ride together and my son has been racing for about a year and a half. He recently won a 60 minute race in a 16 to 29 year old expert class racing against men up to 50 plus years old. beating them all by a minute and a half approximately. It saddens me that our government officials do not understand how this sport has helped my children and many others that we spend most of our weekends with, being forced to work around these wrongful impositions. My son and I took the safety courses offered by our dealers and the manufacturers, which by the way is a good thing, My son which is not very big, was forced by these same kind of silly standards to be criminalized. My son had to ride a machine which was not by the standard age requirements now in place and proposed, he gave all the demonstrations at the safety class since he was more experienced than all the others there including the instructor, except me.

Now, I am not against responsible rules and safety regulations, but am against ones that force the great people of this country to do things to go around and/or break the rules, because of the one's imposing said rules do it in ignorance.

We should have responsible rules with input from those in the field, rather than rules, just to make rules. If the people in government wish for our future adults to have respect rather than disdain, The rules need to make sense, there should be reasonable criteria, (i.e. testing, physical size, proof of ability, etc.) rather than a blanket age regulation.

Thank you for your time!!

Sincerely,

Jeff Riley
Concerned Enthusiast

ATV
Comments
4

The University of Chicago

DEPARTMENT OF PEDIATRICS SECTION OF GENERAL PEDIATRICS

5841 S. Maryland Avenue
MC6082
Chicago, Illinois 60637
(773) 702-6602
Fax: (773) 834-5964



March 15, 2005

The Honorable Hal Stratton
Chairman

The Honorable Thomas Moore
Vice Chairman
U.S. Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton and Vice Chairman Moore:

As pediatricians, trauma surgeons, nurses and other medical professionals, we urge you to reject the Commission's staff recommendation to deny the petition from Consumer Federation of America et. al. requesting a national safety standard barring the sale of adult-size all-terrain vehicles (ATVs) for use by children under age 16. Our daily experiences in emergency, operating and examining rooms nationwide as well as years of peer-reviewed research demonstrate that these children do not have the range of physical, cognitive and developmental skills necessary to safely operate these powerful motor vehicles. We believe that a federal rule issued by the Commission is an integral part of a more comprehensive effort to improve ATV safety, including aggressive education, enactment of state laws, and increased parental involvement.

The Commission is well-aware of the significant body of epidemiological research documenting the rising toll that adult-size ATVs take on our children in terms of serious injuries and deaths. Moreover, as the Commission's staff appropriately acknowledges in its recommendation, ATV-related injuries are more severe than those caused by any other form of recreation or sport in which children routinely participate based on hospitalization rates per thousand participants.¹ In light of these consistent and long-term findings, major national medical organizations, including the American Academy of Pediatrics and the American Academy of Orthopaedic Surgeons, have adopted formal policies and positions recommending that children under 16 years old not drive ATVs.

¹ U.S. Consumer Product Safety Commission. Briefing Package: Petition requesting ban of ATVs sold for the use of children under 16 years of age, February 2005, Tab J.

We are concerned that the staff's recommendation overall deemphasizes the significant public health and monetary benefits that could be achieved with a national standard, including the fact that moving children from adult-size ATVs to youth models could cut the risk of serious injury and death in half. Instead, staff focus on costs that can not be quantified and appear relatively minor when compared to the benefits associated with reducing serious injuries and fatalities. Furthermore, we question how the staff can effectively propose to continue to rely on industry's approach to safety when the Commission has documented significant dealer noncompliance with manufacturers' voluntary agreement not to recommend the sale of adult-size ATVs for use by children.

With these issues in mind, we urge you to reject staff's recommendation and move forward to develop a regulation prohibiting the sale of adult-size ATVs for use by children under age 16. In light of the serious and persistent nature of this public health problem, issuing a strong regulation would help to improve industry and dealer accountability and parental responsibility. This regulation would also be an important component of a comprehensive approach to this issue. We are committed to working with the Commission and others to develop and implement this approach on behalf of our patients and every child.

Thank you for considering our views. If you or your staff would like to discuss this issue in more detail, please feel free to contact Dr. Michael Gittelman, MD, Cincinnati Children's Hospital Medical Center, (513) 636-7966 or Dr. Mary Aitken, MD, University of Arkansas for Medical Sciences/Arkansas Children's Hospital, (501) 364-3300.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Quinlan', with a long horizontal flourish extending to the right.

Kyran Quinlan, M.D., M.P.H.
Clinical Associate Professor Pediatrics
Section of General Pediatrics

March 15, 2005

ATV comment 5

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Sincerely,

Kelly Monroe, MD.



**Baystate
Medical Center
Children's
Hospital**

A Member of Baystate Health System

March 15, 2005

ATV
Committee
6

Springfield, Massachusetts 01199

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U.S. Consumer Product Safety Commission
Washington, DC 20207**

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Sincerely,
Patricia Letourneau, RN
Pediatric Trauma Coordinator
Baystate Medical Center Children's Hospital
Springfield< Ma.01199

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Sincerely,

Julie Philbrook, RN, MA
Trauma Prevention Spec
Hennepin County M&C Ctr.

ATV
8

March 15, 2005

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Thank you for considering our views. If you or your staff would like to discuss this issue in more detail, please feel free to contact any of us. Affiliations listed below are for identification purposes only.

Sincerely,

Dr. Phyllis Agran, MD, MPH

Dr. Mary Aitken, MD, MPH
Associate Professor of Pediatrics
University of Arkansas for Medical Sciences

Dr. Diana Alexander, MD
Pediatrician
Franklin Square Hospital
Baltimore, MD

Peggy Allen, RN, BSN
Nurse Educator, Community Outreach
Project Director
Barren County Safe Communities
Glasgow, KY

Dr. Karen Armitage, MD, FAAP
Pediatrician and Public Health Physician
Santa Fe, NM

Dr. Barbara Barlow, MD
Executive National Director
Injury Free Coalition for Kids
New York, NY

Ryan Barrett
Program Coordinator
Injury Free Coalition for Kids
of Salt Lake City

Dr. Carl Baum, MD, FAAP, FACMT
Center for Children's Environmental
Toxicology
Yale-New Haven Children's Hospital

Dr. Julia Belkowitz, MD
Voluntary Assistant Professor of Pediatrics
Injury Free Coalition for Kids of Miami
University of Miami

Dr. Andrew C. Bernard, MD
Assistant Professor of Surgery
University of Kentucky Hospital Trauma
Center

Dr. Clay Bordley, MD, MPH
Associate Professor of Pediatrics
Division of Emergency Medicine
Director, Pediatric Hospitalist Program
Duke University

Dr. William E. Boyle, MD
Professor of Pediatrics and Community and
Family Medicine
Dartmouth Medical School
Chairman, Committee on Injury and Poison
Prevention (1991-1995)
American Academy of Pediatrics

Dr. Anne Brayer, MD
Assistant Professor, Pediatric Emergency
Medicine
University of Rochester
Golisano Children's Hospital
Rochester, NY

Dr. Jeffrey W. Britton, MD, FAAP
Co-Chair, Committee on Injury and Poison
Prevention
Wisconsin Chapter, American Academy of
Pediatrics

Dr. Julie Brown, MD, MPH
Pediatric Emergency Medicine
Children's Hospital and Regional Medical
Center
Seattle, WA

Dr. Marilyn J. Bull, MD, FAAP
Morris Green Professor of Pediatrics
Director, Developmental Pediatrics
Riley Hospital for Children
Indianapolis, IN

Dr. Richard Lee Byrd, MD
Chief of Pediatrics
Kelsey-Seybold Clinic
Houston, TX

Dr. Deborah Callanan, MD, FACEP, FAAP
CHRISTUS Santa Rosa Children's Hospital
San Antonio, TX

Arlethea D. Campbell, RN
Houston, TX

Dr. Carolyn B. Carlson, MD, PhD, FAAP
Pediatrician
Kelsey-Seybold Clinic
Houston, TX

LesleyAnn Carlson, RN, MS
Director, Emergency Services
San Diego Children's Hospital

Dr. Marcel J. Casavant, MD, FACEP,
FACMT
Emergency Medicine Physician
Children's Hospital
Columbus, OH

Dr. Susan Lee Chan, MD
Pediatric Emergency Medicine Attending
Long Island Jewish Medical Center

Dr. Jennifer Chapman, MD
Assistant Professor of Pediatrics
Columbus Children's Hospital
Ohio State University

Dr. Lynn Cimpello, MD
Assistant Professor, Pediatric Emergency
Medicine
University of Rochester
Golisano Children's Hospital
Rochester, NY

Susan A. Cox, RN, MS, CEN
Director of Trauma Service
San Diego Children's Hospital

Dr. Natalie Cvijanovich, MD
Associate Physician
Division of Critical Care
Children's Hospital Oakland
Oakland, CA

Dr. Walter Dehority, MD
First Choice Community Healthcare
Albuquerque, NM

Dr. Margaret Dolan, MD, FAAP

Susan Douglass
Administrative Director, Child Health and
Safety Awareness
Injury Free Coalition for Kids of San
Antonio
Safe Kids Coalition of San Antonio

Dr. Susan Duthie, MD
Pediatric Intensivist
San Diego Children's Hospital

Dr. Paul D. Edwards, MD
Shriners Hospital, Plastic Surgery
Harvard University

Dr. James Eusebio, MD, FAAP
Davis, CA

Dr. Mary E. Fallat, MD
Chief of Surgery and Trauma
Kosair Children's Hospital
Professor of Surgery
Division of Pediatric Surgery
University of Louisville

Cheri Fidler, MEd
Director, Center for Healthier Communities
San Diego Children's Hospital

Dr. Jami D. Frost, MD
Associate Professor, Pediatrics
University of New Mexico

Dr. Barbara A. Gaines, MD
Director of Trauma and Injury Prevention
Children's Hospital of Pittsburgh
Assistant Professor of Surgery
University of Pittsburgh.

Dr. Madelyn Garcia, MD
Fellow, Pediatric Emergency Department
University of Rochester
Golisano Children's Hospital
Rochester, NY

Dr. H. Garry Gardner, MD
Darien, IL

Dr. Karen Gelfand, MD
Member, American Academy of Pediatrics
Farmington, NM

Dr. Barry Gilmore, MD, FAAP
Medical Director of Emergency Services
Assistant Professor of Pediatrics
University of Tennessee College of
Medicine

Dr. Michael Gittelman, MD
Assistant Professor of Clinic Pediatrics
Cincinnati Children's Hospital Medical
Center

Dr. John Golestan, MD, FAAP
Director, Pediatric Emergency Medicine
Mercy Hospital of Pittsburgh

Dr. Carol Green, MD
Kelsey-Seybold Clinic
Houston, TX

Dr. Jonathan I. Groner, MD
Trauma Medical Director
Children's Hospital of Columbus
Clinical Associate Professor of Surgery
Ohio State University College of Medicine
and Public Health

Dr. John W. Hafner, MD, FACEP
Clinical Assistant Professor of Surgery –
Emergency Medicine
University of Illinois College of Medicine at
Peoria
Attending Physician
OSF Saint Francis Medical Center
Department of Emergency Medicine
Peoria, IL

Dr. Martin I. Herman, MD, FAAP, FACEP
Assistant Director Emergency Services
Lebonheur Children's Medical Center
Associate Professor Pediatrics
Division Critical Care and Emergency
Services
University of Tennessee College of
Medicine

Dr. Bob Hickey, MD
Division of Pediatric Emergency Medicine
Children's Hospital of Pittsburgh

Judith Hirschfeld, BS
Passenger Safety Program Specialist
Children's Hospital Trauma Program
Columbus, OH

Dr. Benjamin Hoffman, MD, FAAP
Assistant Professor
Director, Pediatric Residency Program
Department of Pediatrics
University of New Mexico

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David Geffen School of Medicine at UCLA

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University of Kentucky
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Medical Director, Pediatric Programs
Chair of Pediatrics
Suburban Hospital
Bethesda, MD

Dr. Jane Knapp, MD
Injury Free Coalition for Kids

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Riley Hospital for Children
Indianapolis, IN

Dr. Robert L. Kriel, MD
Hennepin County Medical Center (MN)

Dr. Giorgio Kulp, MD, FAAP
Pediatrician
Metropolitan Pediatrics, LLC
Montgomery County, MD

Dr. Lois Lee, MD, MPH
Director of Trauma Research
Division of Emergency Medicine
Children's Hospital Boston

Dr. Michael Levy, MD
Chief, Neurosurgery
San Diego Children's Hospital

Dr. James G. Linakis, PhD, MD
Associate Professor of Emergency Medicine
& Pediatrics
Brown Medical School
Associate Director, Pediatric Emergency
Medicine
Hasbro Children's Hospital/Rhode Island
Hospital

Dr. Jan Loeffler, MD
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Dr. Barry E. LoSasso, MD, FACS
Trauma Medical Director
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Maryville, TN

Dr. Merlene McAlevy, MD, FAAP
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Pediatric Emergency Medicine
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Indiana University School of Medicine

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Co-Director, Injury Free Coalition of
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Chief, Division of General Pediatrics and
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Director, Pediatric and Adolescent Health
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Columbus Children's Hospital

Dr. Gilbert A. Smith, MD
Colbert, WA

Gayane Stepanian
Director of Community Affairs
Injury Free Coalition for Kids - Miami
University of Miami/Jackson Memorial
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Assistant Professor
Shriners Hospital for Children
University of Kentucky
Department of Orthopaedic Surgery

Dr. Robert R. Tanz, MD
Immediate Past-Chair, Section on Injury and
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American Academy of Pediatrics
Professor of Pediatrics
Northwestern University
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Children's Hospital
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Children's Mercy Hospitals and Clinics
Kansas City, MO

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Advanced Pediatrics
Vienna, VA

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Director, Injury Prevention and Control
Winthrop University Hospital
Mineola, NY

Dr. Jeffrey Weiss, MD
Section Head, General Pediatrics
Medical Director, Injury Prevention Center
Phoenix Children's Hospital

Dr. James A. Wilde MD, FAAP
Associate Professor of Pediatrics and
Emergency Medicine Section Chief
Pediatric Emergency Medicine Research
Director
Department of Emergency Medicine
Medical College of Georgia



THE UNIVERSITY OF NEW MEXICO • HEALTH SCIENCES CENTER
CARRIE TINGLEY HOSPITAL

ATV
Commission

9

March 15, 2005

The Honorable Hal Stratton
Chairman

The Honorable Thomas Moore
Vice Chairman
US Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton and Vice Chairman Moore:

As pediatricians, trauma surgeons, nurses and other medical professionals, we urge you to reject the Commission's staff recommendation to deny the petition from the Consumer Federation of America, et al, requesting a national safety standard barring the sale of adult-size all-terrain vehicles (ATVs) for use by children under age 16. Our daily experiences in emergency, operating, and examining rooms nationwide as well as years of peer-reviewed research demonstrate that these children do not have the range of physical, cognitive, and developmental skills necessary to safely operate these powerful motor vehicles. We believe that a federal rule issued by the Commission is an integral part of a more comprehensive effort to improve ATV safety, including aggressive education, enactment of state laws, and increased parental involvement.

The Commission is well aware of the significant body of epidemiological research documenting the rising toll that adult-size ATVs take on our children in terms of serious injuries and deaths. Moreover, as the Commission's staff appropriately acknowledges in its recommendation, ATV-related injuries are more severe than those caused by any other form of recreation or sport in which children routinely participate based on hospitalization rates per thousand participants.¹ In light of these consistent and long-term findings, major national medical organizations, including the American Academy of Pediatrics and the American Academy of Orthopaedic Surgeons, have adopted formal policies and positions recommending that children under 16 years old not drive ATVs.

We are concerned that the staff's recommendation overall deemphasizes the significant public health and monetary benefits that could be achieved with a national standard, including the fact that moving children from adult-size ATVs to youth models could cut

¹ US Consumer Product Safety Commission. Briefing Package: Petition requesting ban of ATVs sold for the use of children under 16 years of age, February 2005, Tab J.

the risk of serious injury and death in half. Instead, staff focus on costs that cannot be quantified and appear relatively minor when compared to the benefits associated with reducing serious injuries and fatalities. Furthermore, we question how the staff can effectively propose to continue to rely on industry's approach to safety when the Commission has documented significant dealer noncompliance with manufacturers' voluntary agreement not to recommend the sale of adult-size ATVs for use by children.

With these issues in mind, we urge you to reject staff's recommendation and move forward to develop a regulation prohibiting the sale of adult-size ATVs for use by children under age 16. In light of the serious and persistent nature of this public health problem, issuing a strong regulation would help to improve industry and dealer accountability and parental responsibility. This regulation would also be an important component of a comprehensive approach to this issue. We are committed to working with the Commission and others to develop and implement this approach on behalf of our patients and every child.

Thank you for considering our views. If you or your staff would like to discuss this issue in more detail, please feel free to contact Dr. Michael Gittelman, MD, Cincinnati Children's Hospital Medical Center, (513) 636-7966, or Dr. Mary Aitken, MD, University of Arkansas for Medical Sciences/Arkansas Children's Hospital, (501) 364-3300.

Sincerely,



Richard M. Schwend, MD
Associate Professor of Orthopaedic
Surgery, Rehabilitation, and Pediatrics
Chief, Pediatric Orthopaedics

ATV

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March 15, 2005

The Honorable Hal Stratton
Chairman

The Honorable Thomas Moore
Vice Chairman
U.S. Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton and Vice Chairman Moore:

As pediatricians, trauma surgeons, nurses and other medical professionals, we urge you to reject the Commission's staff recommendation to deny the petition from Consumer Federation of America et. al. requesting a national safety standard barring the sale of adult-size all-terrain vehicles (ATVs) for use by children under age 16. Our daily experiences in emergency, operating and examining rooms nationwide as well as years of peer-reviewed research demonstrate that these children do not have the range of physical, cognitive and developmental skills necessary to safely operate these powerful motor vehicles. We believe that a federal rule issued by the Commission is an integral part of a more comprehensive effort to improve ATV safety, including aggressive education, enactment of state laws, and increased parental involvement.

The Commission is well-aware of the significant body of epidemiological research documenting the rising toll that adult-size ATVs take on our children in terms of serious injuries and deaths. Moreover, as the Commission's staff appropriately acknowledges in its recommendation, ATV-related injuries are more severe than those caused by any other form of recreation or sport in which children routinely participate based on hospitalization rates per thousand participants.¹ In light of these consistent and long-term findings, major national medical organizations, including the American Academy of Pediatrics and the American Academy of Orthopaedic Surgeons, have adopted formal policies and positions recommending that children under 16 years old not drive ATVs.

We are concerned that the staff's recommendation overall deemphasizes the significant public health and monetary benefits that could be achieved with a national standard, including the fact that moving children from adult-size ATVs to youth models could cut the risk of serious injury and death in half. Instead, staff focus on costs that can not be quantified and appear relatively minor when compared to the benefits associated

¹ U.S. Consumer Product Safety Commission. Briefing Package: Petition requesting ban of ATVs sold for the use of children under 16 years of age, February 2005, Tab J.

ATV
Com

11

March 15, 2005

The Honorable Hal Stratton
Chairman

The Honorable Thomas Moore
Vice Chairman
U.S. Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton and Vice Chairman Moore:

As a pediatrician and a parent I urge you to reject the Commission's staff recommendation to deny the petition from Consumer Federation of America et. al. requesting a national safety standard barring the sale of adult-size all-terrain vehicles (ATVs) for use by children under age 16. Physicians' daily experiences in emergency, operating and examining rooms nationwide, years of peer-reviewed research, and facts about child develop, both physical and mental, demonstrate that children do not have the range of physical, cognitive and developmental skills necessary to safely operate these powerful motor vehicles. We have a responsibility to protect this vulnerable population from exposure to unsafe conditions. I believe that a federal rule issued by the Commission is an integral part of a more comprehensive effort to improve ATV safety, including aggressive education, enactment of state laws, and increased parental involvement.

The Commission is well aware of the significant body of epidemiological research documenting the rising toll that adult-size ATVs take on our children in terms of serious injuries and deaths. Moreover, as the Commission's staff appropriately acknowledges in its recommendation, ATV-related injuries are more severe than those caused by any other form of recreation or sport in which children routinely participate based on hospitalization rates per thousand participants.¹ In light of these consistent and long-term findings, major national medical organizations, including the American Academy of Pediatrics and the American Academy of Orthopaedic Surgeons, have adopted formal policies and positions recommending that children under 16 years old not drive ATVs.

We are concerned that the staff's recommendation overall deemphasizes the significant public health and monetary benefits that could be achieved with a national standard, including the fact that moving children from adult-size ATVs to youth models could cut the risk of serious injury and death in half. Instead, staff focus on costs that can not be quantified and appear relatively minor when compared to the benefits associated with reducing serious injuries and fatalities. Furthermore, we question how the staff can effectively propose to continue to rely on industry's approach to safety when the

¹ U.S. Consumer Product Safety Commission. Briefing Package: Petition requesting ban of ATVs sold for the use of children under 16 years of age, February 2005, Tab J.

Commission has documented significant dealer noncompliance with manufacturers' voluntary agreement not to recommend the sale of adult-size ATVs for use by children.

Accepting this recommendation is tantamount to declaring that children do not have the protection of society and their welfare is secondary to the interests of business.

With these issues in mind, we urge you to reject staff's recommendation and move forward to develop a regulation prohibiting the sale of adult-size ATVs for use by children under age 16. In light of the serious and persistent nature of this public health problem, issuing a strong regulation would help to improve industry and dealer accountability and parental responsibility. This regulation would also be an important component of a comprehensive approach to this issue. We are committed to working with the Commission and others to develop and implement this approach on behalf of our patients and every child.

Thank you for considering my view. If you or your staff would like to discuss this issue in more detail, please feel free to contact Dr. Michael Gittelman, MD, Cincinnati Children's Hospital Medical Center, (513) 636-7966 or Dr. Mary Aitken, MD, University of Arkansas for Medical Sciences/Arkansas Children's Hospital, (501) 364-3300, both of whom have extensive knowledge and experience relevant to this issue.

Sincerely,

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April 2, 2005

The Honorable Hal Stratton
Chairman
U.S. Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton:

Our group of parents is writing to request a meeting with you to discuss all-terrain vehicle (ATV) safety. Families will be traveling to Washington, DC from Idaho, Ohio, Oregon and Massachusetts on May 10th. Our sons were killed on ATVs. We have experienced how deadly these machines can be and believe that other parents can be spared our pain and loss if the Commission would develop and issue a regulation barring the sale of adult-size ATVs for use by children under age 16.

You are familiar with the growing number of ATV-related deaths and injuries and the evidence which demonstrates that the ATV industry's voluntary approach to safety is failing. We understand that you and your staff have questioned whether or not the Commission can improve safety by regulating the sale of large ATVs for use by children. Speaking from tragic experience, we strongly believe that the Commission can, and must, play an active role in addressing this problem. It can begin by developing a federal regulation that would bar the sale of adult-size ATVs for use by children. As parents who purchased ATVs, we would have made different choices had we been informed that a federal regulation prohibited the sale of certain ATVs because they pose such serious dangers to children. The industry's approach failed some of us miserably as dealers sold us adult ATVs with the full knowledge that our children would drive them. Your investigations demonstrate that as many as four out of every ten dealers is similarly failing other parents by not complying with age recommendations.

We strongly believe that the Commission can save lives and protect children by issuing a regulation. That action will send a powerful message to parents, a message they do not receive frequently or clearly enough from the industry. The ATV industry has had more than enough opportunity to solve this problem, and it has failed. It is time for the Commission to lead in this area on behalf of children and families across the country.

We appreciate your willingness to consider this request. We will be available to meet in the afternoon on May 11th. Your staff can contact any of the members listed below to schedule a meeting. We look forward to hearing from your office soon.

Sincerely,

Sue and Thomas Rabe
Turner, Oregon
503-743-2670 home phone

Carolyn and Thomas Anderson
Brockton, Massachusetts
508-587-3335 home phone

Carol and Mike Keezer
Defiance, Ohio
419-399-2860 home phone

Cynde Nichols
Caldwell, Idaho

Cleoria Glenn
Caldwell, Idaho

Jennifer Martin
Orlando, Florida

Cynthia Lefevers
Morgantown, West Virginia



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Officials say young ATV riders at risk Law doesn't restrict age, punish watchful parents

By **ERIK JOHNS**
Advocate Reporter

NEWARK — The father of a 5-year-old boy will likely not face any legal recourse for allowing his son to drive an all-terrain vehicle which eventually plunged into a frigid pond on Sunday.

Derrick Gayheart, of Wilkins Run Road, remains in critical condition in pediatric intensive care at Children's Hospital in Columbus after the ATV he was driving by himself rolled into the water on his father's property.

Mary Ann Township Fire Chief Kelly Smith estimated the boy was in the water for about 10 minutes.

Derrick's father, Rick Gayheart, was watching Derrick while he drove the 300-cc ATV.

"There's no statutory prohibition that says a father can't let his 5-year-old son drive an ATV on private property," Licking County Sheriff's Office Lt. Bruce Myers said. "And there are going to be some people who question a father's judgment in letting a 5-year-old ride by himself."

The Ohio Revised Code only has age prohibitions for ATV drivers if they are on public property or roadways.

In addition to being on private property, Derrick was under his father's observation.

"There was no apparent neglect on his (father's) part," Myers said.

He added that he can't recall ever having seen someone as young as Derrick driving an ATV by himself.

According to research from the National Children's Center for Rural and Agricultural Health and Safety — a federally-funded vehicle safety organization — ATV drivers younger than 16 are nearly four times more likely than ATV operators older than 16 to experience an injury requiring emergency room treatment.

From 2000 to 2002, 103,400 youths younger than 16 were hospitalized for ATV-related injuries.



Zanesville

One-third of all ATV fatalities between 1982 and 2002 were children under 16, yet that age group only represents about 14 percent of all riders, the center reported.

"That definitely tells you something about youth drivers," said Lisa Decker, rural safety specialist for the center.

Unlike a car, an ATV requires physical effort from the rider to execute turns and maintain control, Decker said.

"Youth lack the size, strength and coordination to drive an ATV," she said.

Decker added that the responsibility for the safety of children on ATVs ultimately lies with parents.

"It's the parents' job," she said. "Parents need to know the risk factors involved with these vehicles."

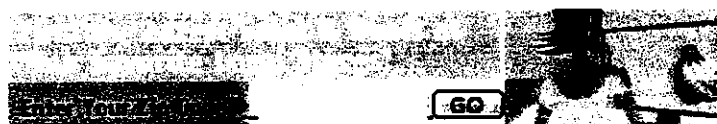
In addition to proper parental supervision, Decker recommends that riders take a certified safety course, wear helmets, gloves and protective boots, and stay off of roadways.

Reporter Erik Johns can be reached at (740) 328-8543 or ejohns@nncogannett.com

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Originally published Tuesday, January 18, 2005



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April 4, 2005

The Honorable Hal Stratton
Chairman
U.S. Consumer Product Safety Commission
Washington, DC 20207

Dear Chairman Stratton:

A group of 5 families, parents of whom, are writing to request a meeting, with you, to discuss all-terrain vehicle (ATV) safety. Families will be traveling to Washington, DC from Idaho, Ohio, Oregon and Massachusetts on May 10th. Our sons were killed on ATVs. We have experienced how deadly these machines can be and believe that other parents can be spared our pain and loss if the Commission would develop and issue a regulation barring the sale of adult-size ATVs for use by children under age 16.

The ATV industry's voluntary approach to safety is failing. We understand that you and your staff have questioned whether or not the Commission can improve safety by regulating the sale of large ATVs for use by children. Speaking from tragic experience, we strongly believe that the Commission can, and must, play an active role in addressing this problem. It can begin by developing a federal regulation that would bar the sale of adult-size ATVs for use by children. As parents who purchased ATVs, we would have made different choices had we been informed that a federal regulation prohibited the sale of certain ATVs because they pose such serious dangers to children. The industry's approach failed some of us miserably as dealers sold us adult ATVs with the full knowledge that our children would drive them. Your investigations demonstrate that as many as four out of every ten dealers is similarly failing other parents by not complying with age recommendations.

We strongly believe that the Commission can save lives and protect children by issuing a regulation regarding ATV's. That action will send a powerful message to parents, a message they do not receive frequently or clearly enough from the industry. The ATV industry has had more than enough opportunity to solve this problem, and it has failed. It is time for the Commission to lead in this area on behalf of children and families across the country.

We appreciate your willingness to consider this request. We will be available to meet in the afternoon on May 11th. Your staff can contact any of the members listed below to schedule a meeting. We look forward to hearing from your office soon.

Sincerely,

Sue and Thomas Rabe
Turner, Oregon
503-743-2670 home phone

Carolyn and Thomas Anderson
Brockton, Massachusetts
508-587-3335 home phone

Carol and Mike Keezer
Defiance, Ohio
419-399-2860 home phone

Cynde Nichols/Cleoria Glenn
Caldwell, Idaho
208-459-4847 home phone

Jennifer Martin
Orlando, Florida

Cynthia Lefevers
Morgantown, West Virginia

March 20, 2005
Office of the Secretary
US Consumer Product Safety Commission
Washington, DC 20207

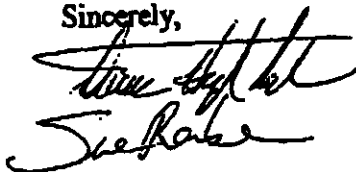
Attention: ATV Petition Briefing

Please reject staff's recommendation on March 22, 2005. Our son Kyle was killed riding an adult size ATV. He could only be considered an expert rider having grown up riding smaller ATV's and motorcycles around our family farm. As he grew out of one size group, we kept getting him bigger vehicles. Most of these were used, which Kyle and his dad "fixed up". When Kyle was nine we went to a local farm store to get a brand new four wheeler for the whole family to use. The salesperson, a friend of ours, showed us an Artic Cat 250cc which was one of the smallest adult size ATV's. At just over \$4000, we thought it would be okay to get just one. We really couldn't afford two and besides, Kyle was growing so fast. What a huge and life long mistake that was. About two years later, Kyle was riding home from his friends' house, just around the hill from where we live. On a gentle, wooded slope, the ATV flipped over landing on him and pinning him to the ground. Kyle's full riding gear wasn't enough to save him and in our opinion, all the training in the world would not have either. That 250cc ATV was so heavy the doctors said it suffocated him almost instantly. His friend, who he was riding with, rode up the hill to get his dad. But it was too late for Kyle. The wonderful lives we had were changed forever.

ATV's are a lot of fun to ride and are very useful as farm tools. However, many children are dying or getting seriously injured riding adult size ATV's. We'd love to see a law banning children under the age of 16 from riding adult size ATV's. But for now, what we want is to make parents aware of the real and not immediately apparent dangers that adult size ATV's pose to children under the age of 16. Warning labels are not enough. These things are well built and will last for generations after labels have faded. Please stop dealers from selling these dangerous, heavy machines to families where children will use them.

PLEASE REJECT STAFF'S RECOMMENDATION! You have to start now if you want to save lives.

Sincerely,



Tom & Sue Rabe
Turner, Oregon

Stevenson, Todd A.

From: Bbchevelle@aol.com
Sent: Wednesday, March 23, 2005 7:52 PM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

as a parent I think I know what size of atv my kids should and can ride it is crazy to even think about putting a 6 foot tall 14 year old on a 90 cc atv his knees will hit the handle bars and it would make a very unsafe condition what are you thinking who are you trying to protect this is absurd why is the government trying to tell parents how to raise there kids we off road as a family I take great measures to make sure my kids ride safe and wear all there gear and have taken a atv safety course is it your goal to take something a parent can do with our kids and have them find something else to do I think the government needs to keep out of parenting and keep to things more important

ken pulford

3/24/2005

ANW
14
Stevenson, Todd A.

From: Annmkirby@aol.com

Sent: Sunday, March 27, 2005 10:10 PM

To: Stevenson, Todd A.

Subject: 4-wheelers.

Hi, I think it should be up to the parents on what they think their children can ride, either that or the youth 4-wheelers should be made to haul a 150 pound 12 year old.

I have 2 boys 1 age 14 that is over 6 ft. tall and weighs 150 pounds and one that is 5foot 7 and weighs about the same and is 12 years old. They both ride our larger quads. We had a 90 cc that we got rid of 1 year ago. It could not hold up for their size. We supervise them and they wear all the safety gear. So I feel If a child is the size of a 16 year old they should be allowed to ride over a size 90 cc.

3/28/2005

ATV

10911 Wickshire Way
Rockville, MD 20852
April 4, 2005

Mr. Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Dear Mr. Stevenson:

This correspondence is in response to the February 11, 2005, Federal Register notice inviting comments on the Consumer Product Safety Commission (CPSC) staff briefing package on the 2002 petition from the Consumer Federation of America (CFA) and others requesting that the Commission ban the sale of adult sized all terrain vehicles (ATVs) for use by children. The comments below consist of some observations related to the staff analysis, staff recommendation on the petition, and offer some suggestions for further actions by the Commission to reduce the hazards of ATVs of all sizes and the deaths and injuries to all ATV users.

Background

Deaths and injuries associated with ATVs have continued to rise over the years despite attempts by the CPSC to address the hazards. The Commission estimates that almost 5800 deaths have been associated with ATV riding since 1982. An advanced notice of proposed rulemaking on regulatory options, a CPSA section 12 lawsuit, consent decrees, industry commendations, and rulings on several petitions over the years have all been ineffective in stemming the tragedies that accompany the use of these products. All of the efforts of the Commission staff and the Commissioners that acted on those efforts were good faith actions that have proven to be largely ineffective for various reasons. The February 2005 briefing package dealing with the CFA petition to ban the sale of adult size ATVs for use by children described the high cost of deaths and injuries that these vehicles impose on children and their families.

The harm done to ATV riders and passengers is not limited to children. The latest statistics on death and injuries as described in the CPSC staff report of January 26, 2005, lists an estimated 125,500 injuries treated in emergency departments of hospitals. The latest available data for calendar year 2003 indicates that there were an estimated total of 345,130 medically treated ATV associated injuries including those treated in emergency departments, doctors' offices and clinics, and injuries treated after hospital admissions. The total injury costs in 2003 were about \$11.4 billion including medical cost, work loss, legal and liability costs, and pain and suffering. Injury costs, not including pain and suffering, were about \$3.7 billion. In addition to the injuries there were an estimated 621 deaths in 2002.

These numbers tell us that, on average, more than one person dies every day and over 900 victims daily seek medical treatment from an accident involving an ATV. The economic cost of these deaths and injuries is around \$15.8 billion per year based on injury cost estimates and loss of life with the statistical value of life at \$7 million each. The societal cost of \$15.8 billion per year converts into over \$2600 societal cost per vehicle per year. With an expected useful life of about 8 years, each vehicle sold has an expected societal cost of over \$20,000. This is over 3 times the average product price. ATVs are truly potentially deadly products that result in deaths and injuries that have a large medical, psychological and economic impact on society.

Industry representatives have attempted to put ATVs in a better light when compared to other recreational, sport, and competitive activities (referred to below as 'action' activities). Industry has presented a comparative safety test based on injuries per participant involved in ATV riding and those other action activities. The injury per participation approach seems to put ATVs in a favorable light compared to some 16 other action activities. The CPSC staff has addressed the issue of comparative safety by examining injuries that lead to hospitalizations for those same 16 activities. ATVs did not look as favorable under those conditions.

Had CPSC examined fatalities associated with those 16 activities they would find that total deaths from 15 of those 16 activities (excluding bicycling) are fewer than 100 deaths per year compared to the 621 ATV deaths estimated in 2002. Bicycling, which results in about 800 or so deaths per year, would see over double that number if the number of bicycle riders died at the same rate as ATV riders. A more comprehensive analysis of ATVs compared to the 'action activities' which included such sports as basketball, football, wrestling, for example, would also consider the positive health benefits of the exercise from those activities versus sitting on a motorized vehicle.

The CPSC staff briefing package on the CFA petition does an excellent job of laying out the hazards and economic costs of deaths and injuries associated with children riding ATVs. The story would be the same if the package addressed all ATV deaths and injuries, including adult victims. The staff recommendation to deny the CFA petition follows from the analysis for all the reasons given in the briefing package.

Past Actions to Address the Problem

Over many years and several briefing packages, the outcome of Commission activities has not reversed the increase in deaths and injuries. All parties involved in the process – CPSC staff and Commissioners, consumer groups, manufacturers and dealers, and consumers have provided input that they hoped would effectively address the problem. Unfortunately, the process to date has failed. Bans have been rejected based on the utility that ATVs render in providing transportation in areas that might otherwise be inaccessible. There are occupational uses for ATVs that would not be available if ATV sales were banned.

Another reason stated by the Commission staff for not banning ATVs is the fact that a sales ban would only affect the introduction of new ATVs into the market and not affect the hazards of ATVs already in use. That is not a valid reason, by itself, to reject a ban; eventually the inventory of ATVs in consumers' hands would be reduced along with the death and injury toll if sales of ATVs were banned.

There have been considerations, but not promulgations, of mandatory safety standards for ATVs and there are industry voluntary standards aimed at reducing deaths and injuries. There are labels and warnings, and rider training programs. Still the deaths and injuries continue to grow.

There are many reasons why past actions of industry and the Commission have been largely ineffective in addressing the hazards with ATVs. The consent decrees had but one positive outcome – manufacturers agreed to stop manufacturing 3-wheeled vehicles. A careful study of the warnings and labels that manufacturers and dealers agreed to display does not give confidence that these methods will seriously avoid the hazards they purportedly address.

Take a few examples of the warnings:

- “WARNING POTENTIAL HAZARD Stalling, rolling, backwards or improperly dismounting while climbing a hill. WHAT CAN HAPPEN Could result in ATV overturning.....HOW TO AVOID THE HAZARD If you begin rolling backwards: Keep weight uphill. Never apply the rear brake while rolling backwards. Apply the front brakes (on single-lever brake, gradually). When fully stopped, apply rear brake as well, and then lock parking brake”.

This is probably sound advice, but very unlikely to be the reactions of many riders, especially children. One has to think about distributing weight, quickly remembering which brake is activated by which hand, etc.

- “WARNING POTENTIAL HAZARD Improperly operating over obstacles. WHAT CAN HAPPEN Could cause loss of control or a collision. Could cause the ATV to overturn. HOW TO AVOID THE HAZARD Before operating in a new area, check for obstacles.”

Practical?

- “WARNING POTENTIAL HAZARD Operating this ATV on paved surfaces. WHAT CAN HAPPEN The ATV's tires are designed for off-road use only, not for use on pavement. Paved surfaces may seriously affect handling and control of the ATV, and may cause the vehicle to go out of control. HOW TO AVOID THE HAZARD Never operate the ATV on any paved surfaces, including sidewalks, driveways, parking lots, and streets.”

Again, how practical is this, and how about operating on flat surfaces that may be unpaved, but hard or frozen with similar physical characteristics as paved surfaces?

- “WARNING POTENTIAL HAZARD Failure to use extra care when operating on excessively rough, slippery or loose terrain. WHAT CAN HAPPEN Could cause loss of traction or vehicle control, which could result in an accident, including an overturn. HOW TO AVOID THE HAZARD Do not operate on excessively rough, slippery or loose terrain until you have learned and practiced the skills necessary to control the ATV on such terrain. Always be especially cautious on these kinds of terrain.”

Remember, this warning is for all-terrain vehicles.

- “WARNING POTENTIAL HAZARD Failure to use extra care when operating this ATV on unfamiliar terrain. WHAT COULD HAPPEN You can come upon hidden rocks, bumps, or holes, without enough time to react. Could result in the ATV overturning or going out of control. HOW TO AVOID THE HAZARD Go slowly and be extra careful when operating on unfamiliar terrain. Always be alert to changing terrain conditions when operating the ATV”.

Two considerations for this warning – stating that one should use extra care in this situation implies one need not take extra care in general and, again consider that this warning is for an all-terrain vehicle.

One wonders whether the above warnings are for riders to avoid the hazards, or for manufacturers and dealers to avoid product liability lawsuits. The fact that this type of approach, i.e., warning labels, was ineffective is not surprising. What is surprising is that the Commission entered into similar industry agreements when the consent decrees ran out. Firms were given a “Resolution of Commendation” for agreeing to conditions almost identical to those under the consent decrees that had no real effect in reducing deaths and injuries.

ATVs: Recreational Vehicles or Utility Vehicles?

A perusal of the history of the industry approach to marketing ATVs suggests that the strategy was, and continues to be, one of lulling the consuming public into accepting these products as safe, wholesome, fun-providing recreational vehicles. The very name, *All-terrain vehicles*, suggests something other than what they really are, as can be seen from the earlier warnings above driving on some very common terrains. ATV users, in comments to the Commission and in presentations at public meetings, have borrowed from the saying, “Families that *pray* together stay together” to claim that, “Families that *play* together stay together”. This suggests that the vehicles have come to be accepted by many as *playthings*.

ATVs, like farm tractors, are very useful utility vehicles that have a place in the market. The recreational use of ATVs, however, may not be a practical form of activity for most people when safety is a factor. It seems that many people have been lured into purchasing and riding ATVs without being aware of the possible consequences. The industry, the Commission staff, consumer groups, safety advocates, and medical care givers all know something different about the toll these vehicles impose on families whose loved ones are killed and injured while riding. And yet, there have been no effective measures taken to date that have lowered the deaths and injuries.

Market Failure

When competitive markets function efficiently there are economic incentives to correct what are considered unfavorable outcomes. Over the past twenty years or so, we would have expected some market changes in reaction to the persistent level of deaths and injuries associated with ATVs. The fact that there have arisen no effective means to reverse the injury and death streams suggests that the market is failing to respond to produce a more favorable outcome.

The market failure that exists in the area of ATVs is one that is known as **asymmetric information**. Asymmetric information is a condition of market failure in which not all parties that may be participants in the market have the same information, or enough information to make a purchase or sale of a product or service in their own best interest. The Office of Management and Budget (OMB) in its guidelines to federal agencies states that, "Market failure may also result from inadequate or asymmetric information." This market failure may require government intervention. In competitive markets all participants have the same information. Much of government intervention in the economy is to make more information available to potential consumers.

OMB states further, "In markets for goods and services, inadequate information can generate a variety of social costs, including inefficiently low innovation, market power, or inefficient resource allocation from *deception of consumers* (italics added). Markets may also fail to allocate resources efficiently when some economic actors have more information than others".

There are many reasons why markets fail to provide outcomes that are in the public interest. The desirable market outcome in reaction to the deaths and injuries observed to be associated with ATVs could have taken many forms. ATV design could have changed to provide safer machines, effective safety equipment could have been introduced, and education and training programs could have led to safer behavior both in riding and giving permission to children to ride. To some extent there have been efforts in these areas, but to no discernible beneficial consequence.

There are many examples of instances of government intervention to provide information to consumers to offset asymmetric information. Mandatory ingredient labeling on foods and other consumer products are means of making consumers aware of what they are

buying. In some instances the information that is mandated gives the consumer the true cost of the goods and services they are purchasing. Example of this are the EPA mandated labels on new vehicles estimating fuel mileage and DOE mandated labels on appliances estimating energy costs.

Possible Commission Actions

There are several steps that the Commission can take to try to make the market for ATVs less asymmetric. First, the Commission should do all it can to influence how the vehicles are marketed and how the vehicles are perceived by the public. Asymmetric information may exist not only from a lack of the facts, but may exist due to *misinformation*. Potential consumers are misinformed about the satisfaction they will derive from these 4-wheeled vehicles by the very name. Although marketed as all-terrain vehicles, it can be seen from discussion above that serious injury and even death can result from operating on all terrains. Warnings, which may or not be read, caution riding on *unfamiliar terrain, rough terrain, loose terrain, terrain with obstacles, slippery terrain, streets, sidewalks, driveways, and parking lots*. These machines perhaps can, however, be operated safely on familiar terrain that is smooth (but not paved), tight, and has a high coefficient of friction (not slippery, presumably not wet). These machines are definitely, not all terrain vehicles, and should not be marketed as such.

Second, the Commission staff knows much more than the consuming public about the total costs of ATVs and should find an effective way of communicating this information to potential buyers of ATVs. CPSC staff has information on the expected societal costs of ATVs when the injuries and deaths that result from ATV riding are calculated. Potential buyers might not be able to make comparative risk assessment decisions even if they knew that there are over 100 fatalities associated with every million ATVs in use. If there was a way to inform consumers that the CPSC has estimated that the expected societal costs associated with every ATV in use is more than \$20,000 over the life of the product, their purchase decisions may be altered. The magnitude of the expected societal cost may also alert them to the safety of these vehicles.

Third, the Commission must have an *effective* information campaign that gets the attention of parents about how dangerous it is to let children ride the adult machines. The Commission has issued alerts and consumer information on the risks associated with riding ATVs. The labels that are on the machines and other means of warning of hazards and of the importance of keeping children off adult size ATVs are apparently not having a noticeable difference on deaths and injuries.

Fourth, the Commission should work with other sectors of the market that have an economic or financial interest in reducing deaths and injuries associated with ATVs.

Lastly, the Commission should make an attempt to provide compensation for ATV owners who come to understand that they were misinformed about the recreational nature of ATVs when they made a decision to buy the machines.

There are some specific steps that the Commission can take to provide more information to potential buyers of ATVs to offset the asymmetric information in that market that has lasted for so long. The Commission, after denying the CFA petition, should direct the staff to explore ways to accomplish the following:

1. *Not allow the vehicles to be sold as all-terrain vehicles.* The name all-terrain vehicles is misleading and contributes to the problem of asymmetric information by suggesting that the vehicles are something other than machines that, in reality, can be operated safely on very limited surfaces. The name may actually contribute to foreseeable misuse of the product, which by itself may invite regulation or restrictions on sales. Perhaps they should be marketed as what they really are: mechanical utility vehicles (MUVs). Perhaps the Federal Trade Commission could provide guidance on whether selling these machines as all-terrain vehicles is a deceptive practice.

The costs associated with such a name change should be minimal; the benefits are potentially very high if peoples' perception of the vehicles is changed whereby potential users identify the MUVs as something other than vehicles that can be used on all terrains.

2. *Not allow the vehicles to be marketed as recreation vehicles.* This would help overcome the asymmetric information that exists that leads people to believe that non-utility riding of these vehicles is safer than statistics demonstrate.

If this suggestion is put into effect, some buyers may still *use* the vehicles for recreation, but if over time, the perception changes because they are not portrayed as recreational vehicles, the benefits will be potentially large. For example, a June 25, 2004, report, 'Illinois Related Injuries/Fatalities Statistics', states that 96 percent of the *reported* fatalities in Illinois for the years 1990-2003 were from non-farm use, while only 2 percent were from farm use. Hopefully, the costs of lost sales will be very large, because as we have seen above, the societal cost savings will be much larger than the lost sales, and the larger the lost sales for recreational use, the better off the consuming public.

3. *Require an oral disclosure statement by sellers.* Develop a requirement that at the time of sale of new vehicles dealers must read *aloud* to potential buyers information from a required hangtag that describes the expected societal costs associated with each vehicle, as calculated by CPSC staff. Purchasers should be asked to affirm in writing that the statement was read to them. This requirement will reduce the asymmetric information in the market, by letting potential customers know what the government and industry has known for years. Potential buyers can then make an informed decision with much more relevant information.

The costs of this suggestion are likely low compared to potential benefits. If the oral disclosures do not deter buyers, they may at least use the vehicles more carefully.

4. *Initiate an organ donor program.* Through riding clubs and other user organizations explore ways of reaching current owners to initiate a program of organ donations. One of the valid critiques of having programs aimed at new buyers is that the vast majority of product users are not affected. The current owners of these vehicles made purchase and use decisions without all relevant information at hand. This donor solicitation program is intended to get their attention to overcome the asymmetric information that existed in the market when they made their purchases. The idea behind this approach is to raise the seriousness of the consequences of accidents with these vehicles. Organ donors should also be solicited from buyers of new vehicles to make them aware of the risk of death and injury.

The costs of this program will probably be low relative to potential benefits, and if people actually become potential organ donors and fatalities do not decline, at least there will be a potential benefit for hundreds of organ recipients each year.

5. *Joint CPSC – insurance industry risk/premium program.* Initiate a program with insurance companies to have homeowners' policies carry a premium that reflects the risk to policyholders for ownership of these vehicles. Although insurance claims for ATV incidents are a small part of the casualty losses compared to fires, floods, and storm damages, it would be in the public interest to internalize these losses to a specific risk group. The risk premium would be another way of overcoming the asymmetry in the ATV market. The OMB guidelines also state that, "insurance markets are important sources of information about risks."

Again, the costs of such a program are likely to be low compared to potential benefits.

6. *Relief for existing ATV owners.* For those who bought ATVs prior to implementation of the above programs, there should be some relief for the costs they bore by buying vehicles without information that was known by CPSC and industry. The costs are in the form of owning vehicles that they may no longer consider safe. It would not be desirable that these current owners sell the vehicles in the used market to others who may not have all of the relevant information. Therefore, CPSC should develop a buy-back of ATVs at prices that reflect depreciation based on expected useful life.

The program could be funded by several means. CPSC could contract with a firm or organization that would buy from vehicle owners, but be allowed to resell for utility applications. Arrangements would have to be developed to cover losses that the firm or organization may incur. Since youth models would be impractical for use as utility vehicles, they may represent an unrecoverable loss that would have to be funded somehow.

Almost all of the suggestions above, with the exception of item 6 above, minimize interference in the market. There are no product bans suggested and no mandatory design or performance standards to be enforced. The suggestions are meant to enhance informed decision making in the market for these vehicles. If adopted, the products will be marketed more closely to what they are designed to provide to buyers, i.e., a utility vehicle that can be used on limited terrains. Buyers will know the true expected costs of the vehicles, current owners will be informed of the potential risks and costs associated with ownership, some of the costs of incidents that lead to losses will be internalized through the insurance market, and there is relief for current owners who bought the machines under conditions of asymmetric information. If the buy-back program can be developed there will be a channel to move current vehicles from recreational use to utility applications.

Of course, it will take time for these measures to result in a decline in deaths and injuries. For over 20 years the market has been operating in an environment of inadequate information in the hands of the consumers and users. CPSC staff should work closely with industry in exploring ways to make these suggestions operational. It is in industry's interest; no responsible manufacturer wants to see customers hurt or killed using their products. Besides the humane reasons, it is not good for business.

If there are any questions about this submission, please feel free to call me at 301-231-7944 or e-mail (wjprunella@comcast.net).

Sincerely,

Warren J. Prunella

Stevenson, Todd A.

From: wjprunella@comcast.net
Sent: Monday, April 04, 2005 3:39 PM
To: Stevenson, Todd A.
Cc: Leland, Elizabeth W.
Subject: ATVs

Please substitute this attachment for the one sent earlier today. Two corrections on page 2. para. 1 price sub. for life; para. 3 sports sub. for ports. Thank you.

4/5/2005

Stevenson, Todd A.

From: wjprunella@comcast.net
Sent: Monday, April 04, 2005 11:20 AM
To: Stevenson, Todd A.
Cc: Leland, Elizabeth W.
Subject: ATVs

Attached is a response to the February 11, 2005 Federal Register Notice inviting comments on the staff briefing package on the 2002 CFA petition.

4/4/2005

~~Stevenson, Todd A.~~

AN

16

From: proracer23 [proracer23@netzero.net]
Sent: Tuesday, April 05, 2005 8:27 PM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

I believe it is up to the parents if their child can buy or ride a quad for 16 years and up. The kids that get killed on quad are usually from town, trying to impress their friends with mommy's or daddy's utility quad and doing things that the quad is not made for. If the safety instructors will teach something useful and not what they are just taught to teach. You need to have actual experienced quad riders to be the instructors, not just the average joe off of the street. Take the lesson on quads in the state of West Virginia from the DMV, a 10 minute video, a small test and to read the law. What is that going to teach anybody. NOTHING! That is a joke. It is like the old saying goes, "Those who can't are those who teach."

Terry & Beth Monroe

ATV

17

Stevenson, Todd A.

From: Bellaire, Jack [JBellaire@StevensAviation.com]
Sent: Wednesday, April 06, 2005 6:39 AM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

Sirs,

Please, don't forbid the sale of full-size ATV's to youth by "AGE". Consider the size of the youth, not the age. For example, I have a son who just turned 7 and is 54" tall and 74lbs. Restricting him to a 50cc atv is insane...he is way to big for it.

Age alone should not determine the requirements. I am ALL for safety and protecting children but be considerate of some of them that are "off the growth charts".

*Thanks,
Jack Bellaire*

*465 Kaleb Mark Dr.
Lyman, SC 29365
864.230.3788*


Stevenson, Todd A.

From: eatonpark [eatonpark@netzero.net]
Sent: Wednesday, April 06, 2005 7:09 PM
To: Stevenson, Todd A.
Subject: "ATV Petition Briefing"

Dear Sirs,

I am writing to comment on a debated "ban" on the sales of full size atvs for use by those under 16. Being an atv rider and racer since I was 16, I think that I have a view that some looking in without experience may not.

There are so many degrees of difference between atvs that are labeled "full size" and so many degrees of difference between children at any age that a flat "ban" is not fitting. As an example I'll use Lebron James, could you honestly see him at age 15 trying to ride an 90cc atv? Obviously this is an extreme case but there are many children out there that are just to large to ride a small atv safely, they exceed weight limits and quite honestly are to large to really use the controls. If the Consumer Federation of America, Bluewater Network, and the Natural Trails and Waters Coalition want to be progressive, then lets offer safety courses and licensing for children over a certain age (maybe 13) and under 16 to operate full size atvs with certain engine displacement limits, depending on their level of capability. We do it with hunting licenses, allowing 12 year olds to handle high powered rifles seems more dangerous than letting a fully instructed and tested young person operate an atv. Perhaps make it mandatory that a child that would like a larger atv would have to have this instruction before the purchase is made?

Hopefully all involved can see a ban is not the answer. I would rather see any kid riding an atv instead of what ever other "mischief" they might get into being left to their own devices.

Thanks
Dave Eaton

Stevenson, Todd A.

JP

19

From: John.Perkins@grace.com
Sent: Wednesday, April 13, 2005 12:54 PM
To: Stevenson, Todd A.
Subject: banned atvs to youths

Please DON'T ban full sized atvs for youths. I think that proper training and parent supervision is the answer.

Thanks for your time
John Perkins
Avid atver with kids and spokesman for the TQRA

Stevenson, Todd A.

20

From: Wendy S [wstrange@tgti.net]
Sent: Thursday, April 14, 2005 2:04 AM
To: Stevenson, Todd A.
Subject: Regulating sales and use of ATV for children

Office of the Secretary
Consumer Product Safety Commission
Washington, DC 20207

To Whom It Concerns:

As a free American citizen I believe that each Adult should have the right to choose which activities they deem excessively dangerous for children. Parents have the right to raise their children as they see fit not the government or insurance companies.

I find that regulating freedom of choice by enforcing other peoples opinions of safety is a basic repression of our civil liberties. The right of people to choose is much more important than the few dollars that will be spent throwing frivolous laws suits out of court by emotionally upset mothers. The right to enjoy driving and riding motorized vehicles by children makes them unconditionally under developed for the driving of cars on road ways. The few parents who regret their decision to allow their child to attempt to learn which resulted in harm or death should not blame the vehicle or restrict others.

Please put down your politics, pick up the constitution, and look at the changes that have harmed our society due to inept, unjustified, restrictions of liberty in the name of safety.

Sincerely,

Wendy Strange

4/14/2005

Carol Pollack-Nelson, Ph.D.
Independent Safety Consulting
13713 Valley Drive
Rockville, Maryland 20850-5402
(301) 340-2912 (phone & fax)

AN
21

April 14, 2005

Mr. Todd Stevenson, Director
Office of the Secretary
U.S. Consumer Product Safety Commission
Washington, D.C. 20207

Re: ATV Petition Briefing

Dear Mr. Stevenson:

I am writing regarding the Briefing Package for all-terrain vehicles (ATVs) concerning Petition CP 02-4/HP-02-1. I wish to comment on human factor issues relating to ATVs. I am a human factors psychologist, having worked in the field of consumer safety since 1982. From 1988 through 1993, I was employed by the CPSC in the Human Factors Division. Since 1994, I have been working independently as a human factors consultant.

Human Factors psychology is a discipline concerned with optimizing the interaction between people and objects in their environment. Product design must take into account consumers' anticipated behavior, knowledge, ability, motivations and perceptions. Understanding these human experiences is useful for determining the best way to address hazards relating to ATVs.

I have reviewed the briefing package and am grateful for the opportunity to comment. It is clear from CPSC's data analyses, that children riding adult-size ATVs is hazardous. Given that the Commission's mission is to protect the public from the risk of injury associated with consumer products, I urge the Commission to use every tool it has at its disposal to attempt to lower the number of deaths and injuries resulting from children riding adult-size ATVs.

A mandatory rule is the most powerful tool the CPSC can utilize to affect injuries and fatalities associated with any given product. A mandatory rule is appropriate for products that pose a serious hazard - particularly to children - when a voluntary effort has been found to be ineffective. Based on the increased injury and fatality and generally low compliance with warning labels, it is apparent that voluntary efforts are inadequate to address this hazard.

By banning the sale of adult-size ATVs for use for children under 16 years, the Commission sends a clear and consistent message to those selling these products. That message is that (1) the risk is real; and (2) those ignoring the ban and exacerbating the risk will be held responsible.

Issuing a mandatory rule sends a clear direction to industry and I believe that manufacturers will be strongly motivated to comply with such a rule, since failure to do so can result in financial penalties. At the same time, a mandatory standard has the potential to positively impact ATV sales. Consumers who had previously purchased a "family" ATV, would now be required to buy separate ATVs - one for their children and one for adult riders.

In addition to sending a clear direction to industry, a mandatory rule also sends a clear message to consumers. As compared to merely suggesting that children should not use adult-size ATVs, a mandatory rule banning the sale of adult-size ATVs for children is a definitive statement that the government thinks that this is so dangerous that they are making it unlawful for children to ride adult-size ATVs. Such a rule is consistent with the incident data and the Commission's determination that "...the benefits of getting children off adult-size ATVs could be substantial" (see Executive Summary of the Briefing Package).

Consumers have come to expect a federal law or ban on products that are determined to be hazardous (or hazardous for a particular segment of the population). In my 20+ years of experience speaking to consumers, I have learned from them that they believe products sold in America are generally safe. If something is dangerous, they *expect* such a product to be removed from the market. Failing to ban the sale of adult-size ATVs for use by children under the age of 16 sends a contradictory message that says: we don't think children should ride an adult-size ATV, but we're not actually going to try to prevent sales to (or for) children or prevent children riding these vehicles.

Currently, the voluntary system recommends that adult-size ATVs be labeled, advising consumers that children under 16 years of age should not ride adult-size ATVs. The incident data clearly demonstrates that some consumers ignore these warnings. When people ignore a warning - assuming that they saw it, read it and understood it - it is often due to their failure to perceive the risk as credible. Research studies demonstrate that if consumers don't perceive themselves to be at risk or don't believe the risk to be serious enough (e.g., life-threatening), they are likely to disregard the message. A mandatory rule banning the sale of adult-size ATVs for use for children sends that strong message. Further, to convince them of both the likelihood and severity of injuries to children who ride adult-size ATVs, industry should be required to employ the marketing companies to assist them in selling safety, just as they have assisted them in the past with selling the product. Marketing companies can be very effective.

During the time that I was employed by the CPSC, I had the opportunity to participate in meetings with industry and Compliance representatives. I distinctly remember industry being told that they should make every effort to lessen hazards associated with their products, even if that action would not entirely eradicate a problem. While a ban on the sale of adult-size ATVs for use by children is not expected to entirely eliminate this problem, it is certainly more likely to have an impact on industry and consumers than the voluntary system, which seems to be ineffective in addressing this hazard. Further, I believe that a mandatory rule, as requested by the petition, would have

increased benefits over time as those selling and purchasing these products gradually become more aware of the risks and the rule.

A ban on the sale of adult-size ATVs for use by children provides a clear and consistent message, which is easier for industry and consumers to interpret than a voluntary standard, and in my opinion, is more likely to be stimulate compliance. The Commission should send a clear message - the message that it seems many already agree upon - that the use of adult-size ATVs by children under 16 should be prohibited in order to significantly reduce deaths and injuries.

I thank you for your consideration of my comments and commend the Commission staff on their thorough investigation of this hazard.

Respectfully submitted,

A handwritten signature in black ink, reading "Carol Pollack-Nelson". The signature is written in a cursive, flowing style with a long horizontal flourish at the end.

Carol Pollack-Nelson


Stevenson, Todd A.

ATV 22

From: Bryce Eddy [beddy@fs.fed.us]
Sent: Tuesday, April 19, 2005 10:37 AM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

ATV Petition Briefing

Hello Federal Safety Panel Member,
I believe that it is the responsibility and accountability of each parent to teach and instruct their children on safe riding, and developing those good habits of ATV's and motorcycles while at a younger age. My parents provided me the safety gear and the instructions necessary to enjoy the activity of riding. I am doing the same for mine, and I hope my grandchildren (someday) will have the same opportunity. Accidents happen regardless of how much caution or instruction we can instill into our children - into everything they do; It is not an ATV/motorcycle discriminator. I believe that we should be able to enjoy the freedom with our children having the opportunity to learn good safe riding habits while they're young, rather than waiting until they're a teenager. At that time it will be quite difficult to teach those safe riding habits, because there is just too much going on in this wonderful world for a 16 year old teenager. My children are 9 and 11 and both have completed the safety course required by Utah law. This is a good course, however, parents should continue to teach their children good safe riding habits just like they should be doing with everything else in life, ie, school, sports, language, religion. There should not be a ban on these ATV's, parents just need to use their heads when allowing their children to ride a certain size machine. I think more parents need to be educated. Maybe they need to go through some parent training course? Think about it, we make the decision, not the child..... Thank you Bryce Eddy Roy Utah

Stevenson, Todd A.

From: Crawford, Whitney E. on behalf of Chairman Stratton
Sent: Tuesday, April 19, 2005 2:27 PM
To: Stevenson, Todd A.
Subject: FW: Potential Spam: (no subject)

Whitney Crawford
Exec. Assistant to the Chairman
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814
Direct line: (301) 504- 7066
Direct fax: (301) 504-0768
Email: wcrawford@cpsc.gov

-----Original Message-----

From: Artandcharlie@aol.com [mailto:Artandcharlie@aol.com]
Sent: Monday, April 18, 2005 10:46 PM
To: Chairman Stratton
Subject: Potential Spam: (no subject)

Is there going to be any legislation regarding All Terrain Vehicles and finally address the fact that so many children under the age of sixteen are being killed while riding them. Wouldn't this fall under the child safety act? I would assume that you could easily say that they pose substantial harm and you would therefore be able to impose a ban on children under the age of sixteen riding them. Please indicate to me why this has not been aggressively passed. Sales of all terrain vehicles has climbed in the last few years and evidently they are not regulating themselves as the deaths have increased as well.

AN

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Stevenson, Todd A.

From: Trujillo, Ismael [Ismael.Trujillo@BellSouth.com]
Sent: Thursday, April 21, 2005 2:13 PM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

Gentlemen,

I feel the banning of atv use for children under 16 is very disturbing to me. I have 2 daughters under 16 that ride atv's with my wife and I. my daughters have full safety gear they know they can never get on the atv without their safety gear, cause I will put them on a time out for the day. The problem with children riding atv's is that some parents do not ride or teach their children how to ride safely. I would recommend a course be required for the sale of atv's for children and first time riders in general.

Thank you



Ismael Trujillo

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4/21/2005

April 22, 2005

HAND DELIVERY

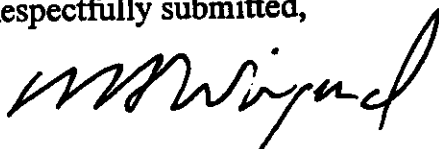
Office of the Secretary
U.S. Consumer Product Safety Commission
Room 502
4330 East-West Highway
Bethesda, Maryland 20814

Re: Post-Hearing Submission Concerning Petition Requesting Ban
Of Adult-Size All Terrain Vehicles Sold For Use By Children
Under 16 Years Old (70 Fed. Reg. 7,247 (Feb. 11, 2005))

Dear Sir or Madam:

Enclosed is a joint submission of the eight major all-terrain vehicle distributors and/or manufacturers concerning the pending petition requesting a ban on adult-size all-terrain vehicles sold for use by children under 16 years old. This submission is in conjunction with the public meeting held on March 22, 2005 to receive comments concerning Petition CP-02-4/HP-02-1 and the CPSC staff briefing package recommending that the Commission deny the petition.

Respectfully submitted,



Michael A. Wiegard

Enclosure

cc: Yves St.-Arnaud, Esq. (w/enclosure)
Michael A. Brown, Esq. (w/enclosure)
Annamarie A. Daley, Esq. (w/enclosure)
Joseph Eisert, Esq. (w/enclosure)
Deborah J. Morrison, Esq. (w/enclosure)
David P. Murray, Esq. (w/enclosure)
John B. Walsh, Esq. (w/enclosure)
Douglas A. Wilson, Esq. (w/enclosure)

**BEFORE THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION**

**JOINT SUBMISSION OF
AMERICAN HONDA MOTOR CO., INC.,
AMERICAN SUZUKI MOTOR CORPORATION,
ARCTIC CAT INC.,
BOMBARDIER RECREATIONAL PRODUCTS INC.,
DEERE & COMPANY,
KAWASAKI MOTORS CORP., U.S.A.,
POLARIS INDUSTRIES INC., and
YAMAHA MOTOR CORPORATION, U.S.A.**

**Public Meeting (March 22, 2005) Concerning
Petition Requesting Ban of
Adult-Size All-Terrain Vehicles Sold For
Use By Children Under 16 Years Old.**

Petition CP-02-4/HP-02-1

70 Fed. Reg. 7,247 (Feb. 11, 2005)

April 22, 2005

I. INTRODUCTION

The eight major distributors and/or manufacturers of all terrain vehicles ("ATVs")¹ appreciate the opportunity to make a written submission pursuant to the U.S. Consumer Product Safety Commission's ("CPSC" or the "Commission") Federal Register notice regarding the March 22, 2005 public meeting concerning a petition from the Consumer Federation of America ("CFA") and a number of other organizations (the "Petition") requesting a ban on the sale of new adult-size ATVs for use by children under 16 years old. 70 Fed. Reg. 7,247 (Feb. 11, 2005). As docketed, the Petition asks that sale of these vehicles be banned only when it is known at the time of sale that the particular vehicle is intended for use by a child under 16.

The most recent CPSC data shows that the Petition is based on false premises. ATV-related injury and fatality rates are not increasing. On the contrary, injury and fatality rates have been stable for ATV riders generally and have declined for children under 16 since the Consent Decrees expired in 1998. Furthermore, these rates are nowhere near pre-Consent Decree levels as the Petitioners have erroneously alleged. Most important, there are no data to show that the requested partial ban on retail sales would be effective in preventing children under 16 from using adult-size ATVs.

The CPSC therefore has no basis to conclude that the substantial costs in terms of lost utility which the requested ban would entail bear a reasonable relationship to any actual benefits. The Commission also could not reasonably find that the requested ban represents the least

¹ The eight major ATV distributors are American Honda Motor Co., Inc., American Suzuki Motor Corporation, Arctic Cat Inc., Bombardier Recreational Products Inc., Deere & Company, Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corporation, U.S.A. (the "ATV Companies").

burdensome requirement which adequately reduces the risk of injury from children under 16 using adult-size ATVs.

The ATV Companies share the interests of the Commission and the Petitioners in ATV safety. In cooperation with CPSC, the ATV Companies have made unprecedented efforts to promote safe and responsible ATV use and to deter both the sale of adult-size ATVs for use by children under 16 and the use of these vehicles by such children. Most recently, the ATV Companies have worked with Weekly Reader to sponsor an innovative ATV safety education program for middle and senior high schools that is likely to be seen by 12 million children and adults. The Petitioners wrongly assert that these efforts have been ineffective. As discussed below, the record instead shows that these efforts have been effectively addressing the use of adult-size ATVs by children under 16.

In short, there is nothing to show that the requested ban could or would have any practical effect on ATV safety beyond what the ATV Companies' efforts, in cooperation with CPSC, are already achieving. As was the case when CPSC previously considered the issue in 1991, the Commission cannot make the requisite statutory findings or meet the relevant regulatory criteria for moving forward with consideration of such a ban. *See* 56 Fed. Reg. 47,166, 47,172 (Sept. 18, 1991). The Petition, therefore, should be denied.

II. DISCUSSION

A. The ATV Companies Have Continued To Make Substantial Efforts To Promote Children's Safety Since Expiration Of The Federal Consent Decrees.

Petitioners assert that the ATV Companies have been "self-regulated" since the expiration of the Federal Consent Decrees ("consent decrees") in April 1998. The apparent implication is that this "self-regulation" has led to reduced efforts by the ATV Companies to

promote children's safety. Nothing could be further from the truth. The ATV Companies not only maintained all of the key elements of the consent decrees relating to child safety, but also implemented additional programs designed to deter the use of adult-size ATVs by children. The Commission officially commended certain of the ATV Companies for these safety efforts, 63 Fed. Reg. 67,861 (Dec. 9, 1998), and has requested and received regular reports from the ATV Companies about the programs.

1. **Continuation Of Consent Decree Programs**

Upon expiration of the consent decrees, each ATV Company committed, in writing and on a voluntary basis, to continue all of the principal consent decree programs, including the ones relating to children's safety. *Id.* These programs are summarized below.

a. **Age Recommendations**

Consistent with the requirements of the consent decrees, each ATV Company has committed not to recommend, market, or sell adult-size ATVs (*i.e.*, with engine sizes greater than 90 ccs) to or for use by persons under 16. Each company has also committed to recommend, market, and sell only youth model ATVs (*i.e.*, with engine sizes 50 to 90 ccs) for use by children under 16 years of age with adult supervision.

b. **Dealer Sales Directives And Undercover Monitoring Programs**

The ATV Companies have also maintained age recommendation directives that prohibit their dealers from recommending or knowingly selling an adult-size ATV for use by a child under age 16. Random investigations of dealers are conducted each year throughout the United States to monitor for compliance with the age recommendation directives. "Secret shoppers" attempt to purchase adult-size ATVs for use by children under 16, and report any violations of the age recommendation directives by dealers. These investigations are conducted both by

CPSC and the ATV Companies. Dealers found to be in violation of the age recommendation directives are subject to disciplinary measures, including potential termination of their dealer agreements.

The dealer monitoring programs were initiated in 1990 and have continued uninterrupted to date. The results of these efforts are reported annually to the Commission. Average industry compliance rates have ranged from 72 to 90 percent.²

c. ATV Labels And Hang Tags

Each ATV Company has continued to use substantially the same warning labels on all new vehicles. These include general warning labels, as well as labels specifically warning against the use of ATVs by children under the recommended ages.

In addition, a "hang tag" containing the age recommendations and other safety information is supplied for each new ATV. These hang tags are displayed on each vehicle at the point-of-purchase.

d. Owner's Manuals

The ATV Companies have continued to include in their ATV owner's manuals all of the substantive safety information required under the consent decrees. This includes multiple warnings against the use of vehicles by underage operators.

e. Safety Alerts

The ATV Companies continue to provide each ATV purchaser with a "safety alert" at the point-of-purchase. The safety alert reiterates the principal warnings about safe and proper ATV use, including the age recommendations. Information concerning the estimated number of

² Petitioners have presented no evidence of any actual sales of adult-size ATVs to or for use by children under 16.

fatalities and injuries associated with ATVs is also provided, and is regularly updated by the ATV Companies.

f. Safety Videos

Every new ATV comes with a safety video for purchasers to review at home. Shortly after expiration of the consent decrees, the ATV Companies produced an updated version of the safety video that continued all of the substantive safety messages from the earlier, consent decree version. The age recommendations are given prominent treatment in the video, providing consumers with further exposure to this information.

g. Advertising

Consistent with the guidelines established under the consent decrees, each ATV Company's advertisements and promotional materials include the age recommendations and other safety messages. The ATV Companies have also continued to promote dealer compliance with these guidelines, including conditioning cooperative advertising funding on such compliance.

h. Training

The ATV Companies have maintained their respective training programs post-consent decree. Most of the ATV Companies offer free, hands-on training nationwide under the direction of the ATV Safety Institute ("ASI"). Monetary incentives are offered to promote the training program. Children aged twelve to fifteen are encouraged to participate in the course, and are only trained on youth-size models (*i.e.*, engine sizes between 70 and 90 ccs). The training curriculum includes an emphasis on the age recommendations for ATVs.

Enrollment for the ASI RiderCourse training program is now available through a new online program at www.atvsafety.org. This innovative online enrollment program is intended to further increase participation in ASI's hands-on ATV training program.

During 2004, ASI distributed 1,500 *Ride Safe, Ride Smart* videos to middle and high schools across the United States with an estimated audience of over 1 million.³

Polaris similarly offers free, hands-on point-of-purchase training through its dealership network. The Polaris training program also emphasizes the age recommendations for ATVs.

i. ATV Hotline

The Specialty Vehicle Institute of America ("SVIA") continues to maintain a toll-free, twenty-four hour ATV safety hotline for its member companies. The ATV hotline provides safety and training information, including the age recommendations for ATVs. The ATV hotline is promoted in the member companies' promotional brochures and print advertisements.

2. Education Efforts

In addition to maintaining all of the programs described above, the ATV Companies have sponsored an innovative ATV safety education program, entitled "*Protect Yourself. Protect the Planet.*" The program was developed in conjunction with *Weekly Reader* for use in middle and senior high schools. During Fall 2004, over 20,000 sets of program materials were distributed to schools in targeted geographic areas with high ATV use. The materials include a teacher's guide, a student activity booklet, a parent take-home letter, and a classroom poster.

"*Protect Yourself. Protect the Planet.*" incorporates the ATV Companies' key safety messages, including following the age recommendations for choosing the proper size ATV,

³ ASI is producing *Ride Safe, Ride Smart* in DVD format. VHS copies of the program will also be available.

wearing the proper safety equipment and riding gear, not allowing passengers on single-operator ATVs, and always riding with adult supervision when under 16. The program also educates participants on how they can be environmentally-responsible ATV riders, by always operating on trails that have been developed in an eco-friendly manner, respecting other trail users and wildlife, not trespassing or littering, and obeying local noise ordinances.

The program materials were designed for use in the classroom, by community and youth organizations, and over the Internet. The response from school teachers and administrators has been uniformly positive, and "*Protect Yourself. Protect the Planet*" is likely to be seen by over 12 million children and adults. A set of the program materials is attached at Appendix A.

3. The ATV Companies' Efforts To Promote Children's Safety Are Unprecedented.

The continuing efforts of the ATV Companies to promote children's safety have been undertaken in close cooperation with CPSC and are virtually unprecedented. No other private industry has implemented such far-reaching, pervasive approaches to deter children from using products intended for adults. Any suggestion by Petitioners or others that "self-regulation" by the ATV Companies has led to reduced safety efforts in this area is demonstrably wrong. Purchasers and users of ATVs continue to be given multiple warnings, in a wide range of complementary ways, that children under 16 should not operate adult-size ATVs.

4. The ATV Companies Invite All New Market Entrants To Participate In Ongoing Industry-Wide Safety Programs Designed To Protect Children.

As noted above, the ATV Companies have developed and implemented nationwide ATV safety programs, including age recommendation requirements for dealers, marketing and advertising policies, warning labels, public education and rider training. Key elements of these programs are aimed at deterring the use of adult-size ATVs by children under 16.

Through SVIA and ASI, the ATV Companies have issued an open invitation to all new entrants to the ATV market in the United States to participate in these safety programs. A number of new entrants have accepted the invitation and strengthened the programs through their participation. The ATV Companies are continuing to contact other new entrants and explain the benefits to ATV safety of such participation. The ATV Companies urge the CPSC staff to make similar efforts to help persuade these new entrants to participate in these safety programs.

B. The Petition Is Based On False Premises.

The Petition is founded on statistical assertions that are either outdated or erroneous. It is also supported by analogies that are invalid and arguments that are legally incorrect.

1. ATV-Related Fatality And Injury Rates Are Decreasing.

The Petitioners continue to assert, based upon statements in the 2001 CPSC Staff ATV Risk Study comparing data from 1997 and 2001, that ATV-related injury and fatality rates are increasing. These comparisons are both outdated and inappropriate. As Dr. Edward Heiden noted in his written testimony at the March 22, 2005 public meeting, the NEISS system from which the ATV injury estimates are drawn underwent a significant revision of its sample of reporting hospital emergency rooms in 1997. This revision resulted in an unexplained larger increase in estimated injuries from 1997 to 1998 than in any year since for a number of consumer products, including ATVs. When ATV injury estimates are evaluated beginning in 1998, the first year that the full compliment of NEISS hospitals in the new reporting sample was available (and, coincidentally, the year the ATV Consent Decrees expired), it is clear that the injury risk associated with the use of ATVs has been essentially stable for the past six years.

The CPSC 2003 Annual Report of ATV deaths and injuries, which represents the most current data, shows that the risk of ATV-related injury has fluctuated between 185 and 200

injuries per 10,000 four wheel vehicles in use since 1998 and actually decreased slightly during 2002 and 2003. In fact, the 2003 rate of 188 injuries per 10,000 four wheel ATVs in use is lower than for any year since 1998.

Perhaps more importantly, an analysis of data from the CPSC 2003 Annual Report presented in the March 22 hearing testimony of Dr. Edward Heiden indicates that the recent trend in injury risk has improved for children under 16 relative to the general ATV-riding population as a whole. This analysis shows that there were an estimated 57 ATV-related injuries to children under 16 per 10,000 four wheel ATVs in use. This represents a 14 percent decrease from the 66.1 injuries to children under 16 per 10,000 vehicles in 1998 when the Consent Decrees expired. The analysis also shows that the risk of ATV-related injury for children under 16 has declined in all but one of the past five years.

The CPSC staff Briefing Package points out that there was also a significant change in the methodology for estimating ATV-related fatalities beginning in 1999 which led to greater reporting of such fatalities that occurred on public roads. It is therefore only appropriate to examine recent trends in ATV-related fatality rates using data collected with this current, more comprehensive statistical methodology. An examination of the fatality estimates for the four-year period from 1999 through 2002 (the estimates for 2003 are as yet not available) shows that overall ATV risk has been declining on balance since 1999 – from 1.4 ATV-related fatalities per 10,000 four wheel vehicles in use to 1.1 fatalities per 10,000 vehicles in use during 2001 and 2002, the two most recent years for which adequate data are available.

An examination of the data also shows that the estimated ATV-related fatality rate for children under 16 likewise declined during this four-year period – from 0.31 fatalities per 10,000 four wheel ATVs in use in 1999 to 0.27 fatalities per 10,000 vehicles in use in 2002. This

represents approximately a 10 percent drop in risk on a per-vehicle basis over that four-year period for children under 16.

2. The ATV Companies' Voluntary Undertakings Are Effectively Addressing The Use Of Adult-Size ATVs By Children Under 16.

Petitioners seek to convey the impression that nothing serious is being done to deter children under 16 from riding adult-size ATVs. That impression is false. As described above, the major ATV Companies continue to implement a comprehensive program designed to deter children under 16 from riding adult-size ATVs. Contrary to Petitioners' assertions, the available data clearly show that these efforts are working. The CPSC staff stated during the March 22 hearing that the percentage of children under 16 operating appropriately-sized youth model ATVs rose from 4 percent in 1997 to 25 percent in 2001, the most recent year for which these data are available. The CPSC staff Briefing Package also states that in 2002 youth model ATVs represented between 10 and 12 percent of new sales, indicating that this upward trend in the purchase and use of appropriately-sized ATVs is continuing. Most importantly, and consistent with the foregoing trend, the proportion of injuries to ATV drivers involving operators under 16 declined from 34 percent in 1997 to 26 percent in 2001.

3. CPSC Cannot Adopt The Requested Ban Based Upon The Mere Assumption That There Will Be Some Incremental Benefit To ATV Safety.

Petitioners mistakenly contend that CPSC can grant the Petition based upon the assumption that the requested ban will have substantial safety benefits merely by virtue of the fact that it represents federal regulatory action. On the contrary, CPSC may not proceed with a ban regulation unless the Commission determines that the requested ban would actually increase ATV safety. *See Aqua Slide 'n' Dive v. CPSC*, 569 F.2d 831, 839 (5th Cir. 1978). The legislative history of the CPSA makes clear that no regulation should impose added cost or

inconvenience to the consumer unless there is reasonable assurance that the frequency or severity of injuries will be reduced. See H.R. Rep. No. 92-1153, at 33 (1972). CPSC therefore could not make the required finding that the requested ban is reasonably necessary to reduce or prevent an unreasonable risk of injury “[w]ithout reliable evidence of the likely number of injuries that would be addressed . . .” *Southland Mower Co. v. CPSC*, 619 F.2d 499, 510 (5th Cir. 1980).

The Commission thus may not proceed with the requested ban regulation solely on the Petitioners’ hypothetical theory that because the ban would represent federal action, it would improve ATV safety beyond the results achieved through the industry’s continuing programs. The Commission may not simply assume that a federal ban regulation would have incremental safety benefits; in order to grant the Petition, it must have substantial evidence quantifying and confirming those benefits in the form of specific reductions in ATV-related injuries to children under 16. See *Aqua Slide*, 569 F.2d at 841-42 (a CPSC requirement for swimming pool warning signs rejected because “the evidence that the signs would reduce the risk rests more on inference than it does on proof”); *Southland Mower*, 619 F.2d at 510.

C. The Available Data Do Not Fulfill The Regulatory Criteria For Granting The Petition.

The CPSC Policy on Establishing Priorities for Commission Action lists a number of criteria the Commission is to apply in establishing and revising its priorities for taking regulatory action. 16 C.F.R. § 1009.8(c). The policy directs that priority shall be assigned according to the extent of product causality involvement. *Id.* § 1009.8(c)(2). Correspondingly, to the extent that consumer behavior is causally related to the injury pattern, it would have lower priority.

The policy further specifies that consideration must be given to the prospective costs of Commission action to consumers and producers, and to the benefits expected to accrue to society from the resulting reduction of injuries. The cost consideration includes effects on utility or

convenience of the product. The benefit estimates are to be based on explicitly stated expectations as to the effectiveness of regulatory options derived from the analysis of causality of injuries. *Id.* § 1009.8(c)(4).

The Commission is also to consider its own costs based on its responsibility to ensure that its resources are utilized efficiently. This consideration must include an assessment of the resources which would be needed both to complete the ban rulemaking and to implement and enforce the ban after final promulgation, and whether this expenditure of resources would be warranted. Enforcement of the ban would be a novel undertaking by the agency, and would require ongoing supervision of dealer communications with potential customers nationwide. The policy provides that assuming other factors to be equal, a higher priority will be assigned to those products which can be addressed using fewer Commission resources. *Id.*

Priority is then to be given to unforeseeable risks arising from the ordinary use of a product. *Id.* § 1009.8(c)(5). Conversely, to the extent that consumer awareness of the hazard is high and the risk foreseeable, it is of lesser priority.

Based on these criteria, the present Petition does not represent a priority for regulatory action by the Commission. The Briefing Package acknowledges that consumer behavior (both parents and children) is causally related to the injury pattern, and that the ban would have substantial costs and lost utility for consumers. The staff is also unable to confirm or quantify any benefits of the requested ban based upon the absence of data showing that a partial ban on retail sales would be effective in preventing children under 16 from using adult-size ATVs. The Commission staff further acknowledges consumers are aware of the hazard presented by riding adult-size ATVs for children under 16 and the possible consequences of such activity. Finally, a

relatively substantial level of CPSC resources would be required to conduct the rulemaking and to enforce the ban nationwide on an ongoing basis.

**D. The Statutory Prerequisites For A Ban Regulation
 Have Not Been Met.**

In order to proceed with a ban regulation under the Consumer Product Safety Act (and related provisions of the Federal Hazardous Substances Act), CPSC would need to find not only that adult-size ATVs sold for the use of children under 16 present an unreasonable risk of injury, but also that the requested regulation would adequately reduce this risk. 15 U.S.C. § 2058(f). This means that CPSC would need to determine and state its expectations regarding the effectiveness of such a ban in terms of a numerical reduction in ATV-related injuries of children under 16. In weighing the potential benefits of the requested ban, the Commission must consider the extent to which children who do not operate adult-size ATVs as a result of the ban might engage instead in other activities that pose a risk of injury or death. *See CFA v. CPSC*, 883 F.2d 1073, 1076 (D.C. Cir. 1989).

In addition, the Commission would need to determine the potential costs of such a ban, both in terms of lost utility of the products and CPSC resources which would be required to conduct such a rulemaking and to implement a final ban regulation, and show that they bear a reasonable relationship to the benefits. CPSC would also need to describe any reasonable alternatives to the ban regulation and their potential benefits and costs. Finally, CPSC would need to find that the requested ban represents the least burdensome requirement which adequately reduces the risk of injury. Furthermore, each of these required findings would have to be supported by substantial evidence on the record taken as a whole. *Id.* § 2060(c).

It is abundantly clear that these statutory prerequisites for issuance of the requested ban regulation have not been met.

1. There Are No Data Showing The Requested Ban Would Have Any Beneficial Effect On Children's Safety.

In terminating its ATV rulemaking in 1991, the Commission concluded that it lacked evidence of any potential incremental benefit of a ban on the sale of adult-size ATVs for children under 16 beyond the benefits achieved through the existing age recommendation warnings and dealer monitoring programs. 56 Fed. Reg. 47,166, 47,172 (Sept. 18, 1991). Similarly, the Petitioners have not presented, and the CPSC staff has not otherwise discovered, any specific information or data to demonstrate – or even suggest – that the requested ban regulation would be more effective in preventing sales of adult-size ATVs for use by children under 16 than the current dealer monitoring programs with the continuing potential for dealer termination. The Commission thus continues to lack any evidence that the requested ban would result in verifiable safety benefits.

CPSC acknowledges that it has no authority to regulate the use of ATVs, or to prohibit a child from riding an adult-size vehicle. The potential benefit of the requested ban is limited to the incremental benefit that it might provide over and above the existing programs designed to deter the retail sale of adult-size ATVs for use by children under 16. The Briefing Package clearly shows that there is no information – much less substantial evidence – from which the Commission could conclude that such a ban would result in any incremental benefit to children's safety.

As described above, the ATV Companies have made extensive efforts to warn the public against the use of adult-size ATVs by children. These efforts have included several nationwide public safety campaigns, involving television and radio advertisements, and the distribution of thousands of brochures, posters, CD-ROMs, and classroom materials to public schools and

libraries around the country. There is no evidence that the public is generally uninformed of the risks associated with the use of adult-size ATVs by children.

Moreover, upon entering a retail dealership, all prospective ATV purchasers are given numerous warnings against the use of adult-size ATVs by children. These include on-product labels, hang tags, safety videos, an “ATV safety alert,” and other materials. There is no evidence that any actual ATV purchasers are uninformed of the risks associated with the use of adult-size ATVs by children.

The ATV Companies also prohibit their dealers from knowingly selling an adult-size ATV for use by a child under 16. These directives preclude the very sales transaction that the proposed ban would address, and are enforced through regular dealer monitoring conducted by the Commission and the ATV Companies. A failure to comply with the directives can result, and has resulted, in termination of the dealership agreement. In light of these potential consequences, the vast majority of dealers monitored over the past five years were found to be in compliance with the age recommendation directives. Dealers reported to be in violation of the directives were required to participate in additional training and enforcement programs, and were subject to termination of their dealership agreement upon a second violation. Virtually all dealers who failed initial investigations were found to be in compliance during subsequent inspections.

The ban proposed by Petitioners would permit the Commission, as opposed to the ATV Companies, to sanction dealers who knowingly sell an adult-size ATV for use by a child under 16. Even assuming the Commission found a violation, the maximum penalty would be an \$8,000 fine. 15 U.S.C. § 2069(a)(1); 69 Fed. Reg. 68,884 (Nov. 26, 2004). It is illogical to assume that a dealer who is willing to violate the existing age recommendation directives – at the

risk of losing its dealership agreement – would pay any more heed to a government ban involving such a far lesser sanction.

In addition, the proposed ban would not apply to sales of used ATVs in the private market, which are approaching half of all sales. More than 80 percent of these units are purchased from a previous owner, not an authorized dealer. The proposed ban would have no effect on these private sales.

Nor would the ban apply to the *use* of adult-size ATVs by children under 16. As previously noted, the agency has no authority to regulate consumer behavior and cannot prevent a parent or guardian from permitting the use of an adult-size ATV by a child under 16. Even assuming the proposed ban prevented the retail sale of such a unit for use by a child, it would have no effect on the ability of that same child to ride other adult-size ATVs that were either purchased for an adult in the retail or private markets or borrowed from family members or friends.

The Commission and the ATV Companies have worked diligently to deter children under 16 from using adult-size ATVs. Although the risks associated with such warned-against behavior are still present, they are not disproportionate to the risks associated with many recreational and other activities in which children commonly – and appropriately – participate. Furthermore, to the extent that the requested ban caused children to shift from riding ATVs to other recreational activities which have similar or greater risk of injury, it would not appear to produce an overall safety benefit. This simply underscores the conclusion that the rigorous statutory criteria for proceeding with the requested ban have not been satisfied.

In 1991, the Commission recognized that these practical considerations would effectively negate any incremental benefits from a similar proposed ban. 56 Fed. Reg. at 47,172. The staff

Briefing Package makes clear there is no information suggesting – let alone substantial evidence demonstrating – that any of these factors have changed over the past decade. Although facially appealing, the ban proposed by Petitioners would have little, if any, practical effect on children’s safety for the exact same reasons. CPSC does not have the burden of showing that the requested ban would be ineffective. Instead, as the Briefing Package correctly recognizes, the Commission cannot proceed with such a ban in the absence of substantial evidence showing it would be effective in achieving quantifiable reductions in ATV-related injuries to children under 16. The Briefing Package makes clear that no such evidence has been presented to the Commission.

2. State Alcohol And Tobacco Laws Are Not Analogous To The Requested Federal Ban.

During the March 22 hearing, one of the Petitioners, Natural Trails and Waters Coalition, attempted to analogize the proposed ban on sales of adult-size ATVs for use by children under 16 to “similar” bans on the sale of alcohol and tobacco to underage persons. Petitioners asserted that alcohol and tobacco sales bans have proven “effective” in reducing underage consumption of these products. Petitioners suggested that the proposed ban on ATV sales might prove similarly “effective” in reducing sales of adult-size vehicles for use by children under 16.

As shown below, Petitioners’ analogy is invalid for several reasons and offers no support for the proposed ATV sales ban. If anything, the state law bans on underage sales of alcohol and tobacco only underscore the importance of effective state ATV safety legislation in further reducing ATV-related accidents and injuries involving children.

First, it is far from clear that bans on underage tobacco and alcohol sales *per se* have been effective in reducing youth access to tobacco or alcohol. The studies cited by Petitioners, for example, indicate that about 95% of twelfth-graders reported that it was “very easy” or “fairly easy” to procure alcohol. See University of Michigan Institute for Social Research, *Monitoring*

the Future: National Results of Adolescent Drug Use (2003), p. 33. Despite long-running tobacco bans, cigarettes are similarly available to underage youth. *Id.* at 35. As the University of Michigan study cited by Petitioners makes clear, alcohol use “remains extremely widespread among today’s teenagers,” *id.* at 7, and cigarette use similarly remains high, *id.* at 6.

Second, although the University of Michigan study notes that there has been a decline in the overall “prevalence of smoking,” *id.* at 34, the study does not attribute this decline to bans on underage tobacco sales, as Petitioners have wrongly suggested. Instead, the study attributes the decline to: (1) an “attitudinal change” resulting from “adverse publicity” suffered by the industry in the 1990s; (2) a reduction in cigarette advertising; and (3) increased cigarette prices because of cigarette taxes and litigation costs. *Id.* at 6-7. The study also points out that “much of that recent improvement was simply regaining ground lost in the early 1990s” when smoking reached its peak -- *despite* the existence of bans on underage sales. *Id.* at 6.

Third, Petitioners cited to a press release from an advocacy group, Campaign for Tobacco-Free Kids, claiming that comprehensive enforcement of cigarette sales through “retailer compliance” can reduce youth smoking caused “by the big cigarette companies.” Campaign for Tobacco Free Kids, *Enforcing Laws Prohibiting Cigarette Sales to Kids Reduces Youth Smoking* (2002). But this claim only further undermines Petitioners’ analogy. Under the United States Constitution, police powers are generally reserved to the states. Thus, the states can enact and enforce comprehensive laws restricting not only the retail sale of tobacco or alcohol to minors, but also the *use* of such products by minors.⁴ The CPSC does not have comparable authority.

⁴ All 50 states and the District of Columbia prohibit the sale of tobacco products to minors. *See* http://www.cancer.org/docroot/PED/content/PED_10_12_State_Legislated_Actions_on_Tobacco_Issues.asp?sitearea=PED. “Forty-five states penalize minors for tobacco-related offenses.” *Id.*

CPSC could only enforce Petitioners' proposed ATV sales ban against retail dealers and distributors at the point-of-sale. CPSC has no authority to impose or enforce a ban on the actual use of adult-size ATVs by children under 16 after a purchase. The testimony, comments, and other evidence received by CPSC during these proceedings demonstrate conclusively that: (1) purchasers of ATVs are almost always adults, not children; (2) the adult purchasers typically intend to use the vehicle themselves, but may "share" it with other family members and friends; and (3) adults could easily evade the proposed sales ban by not disclosing that a purchased ATV would be used by a child under 16. Moreover, the proposed ATV sales ban which would only be enforceable by CPSC and its agents. In contrast, bans on underage tobacco and alcohol sales *and* use are actively enforced at the state level with thousands of law enforcement officials and municipal agencies. *See, e.g.,* 42 U.S.C. § 300x-26(b) (2004) (requiring state enforcement of tobacco bans). *See also* 45 C.F.R. § 96.130 (requiring states to take enforcement measures, including "random, unannounced inspections of outlets to ensure compliance" with underage smoking laws).

Washington state is representative of how states can implement and enforce comprehensive laws to reduce the use of tobacco products by underage youth. *See* <http://www.doh.wa.gov/Tobacco/compliance/youthaccess.htm>. *See also* Alan E. Scott, *The*

"Twenty-five states order minors who are caught with tobacco to perform community service or pay a fine, or both." *Id.* "Eight states— FL, MN, OH, OK, PA, TX, VT, and WI — may suspend the driver's license of a minor who violates their youth access law." *Id.* "Fifteen states — CO, FL, GA, ID, KY, MD, MI, MO, MT, OH, PA, TX, UT, WA, and WY — may require minors to attend smoking education, cessation, or similar health awareness programs in addition to or in lieu of other penalties for tobacco-related offenses." *Id.* *See also* http://lungaction.org/reports/rank-states04.html?domain=reports&select_list_variable_value=youth.

Continuing Tobacco War: State and Local Tobacco Control in Washington, 23 Seattle U. L. Rev. 1097, 1112-17 (Spring 2000).

- Washington imposes a broad range of requirements to enforce its retail sales ban. *See*, e.g., WASH. REV. CODE ANN. § 70.155.020 (2004) (requiring cigarette wholesalers and retailers to post signs informing the public of the ban on underage smoking); *id.* § 70.155.030 (2004) (restricting the sale of tobacco through cigarette machines); *id.* § 70.155.040 (2004) (requiring retailers to sell cigarettes in an original, unopened package); *id.* §§ 70.155.050-.060 (preventing sampling of cigarette products); *id.* § 70.155.70 (preventing coupon sales of cigarettes); *id.* § 70.155.090 (2004) (requiring retailers to demand proof of age when “there may be a question of a person’s right to purchase or obtain tobacco products”).
- Washington imposes fines, community service, and criminal penalties on violators of the ban. *Id.* § 70.155.080(1) (imposing fines and community service for minors that purchase or attempt to purchase cigarettes); *id.* § 26.28.080 (2004) (imposing criminal penalties on anyone who sells or gives cigarettes to minors); *id.* § 70.155.080(2) (granting enforcement jurisdiction to municipal and district courts).
- Washington has created and empowered a “Liquor Control Board” to: (1) enforce youth smoking laws and (2) work with local law enforcement agencies and health departments to enforce underage smoking bans. *Id.* §§ 70.155.100-.120 (2004). The Liquor Control Board (which also regulates alcohol sales) is authorized to:
 - (1) Enforce all provisions relating to sales of cigarettes to minors;
 - (2) Enter into any place of business where tobacco products are sold to enforce the law;

- (3) Detain anyone suspected of purchasing or possessing tobacco while underage; and
- (4) Work with local health department and law enforcement agencies to conduct “random, unannounced, inspections to assure compliance.” *Id.* § 70.155.110 (2004).

- In addition, the Liquor Control Board has the power to suspend or revoke a retailer’s liquor license or impose severe monetary penalties on anyone who violates youth smoking laws. *Id.* § 70.155.100 (2004).
- Washington also imposes stringent restrictions on cigarettes sold by delivery. *Id.* § 70.155.105 (2004), and creates a “youth tobacco prevention account” to collect data on enforcement efforts, to administer a tobacco retailer licensing system, and to provide grants to local health departments and community agencies “to develop and implement coordinated tobacco intervention strategies to prevent and reduce tobacco use by youth.” *Id.* § 70.155.120 (2004).⁵

Other states have similarly comprehensive enforcement laws and programs to reduce the use of tobacco by minors.⁶ Comparable state laws and enforcement programs have also been

⁵ Washington has enacted a host of other laws and regulations to enforce compliance with tobacco bans. *See, e.g.*, WASH. ADMIN. CODE § 314-10-010 to -100 (2004) (imposing restrictions on sale and distribution of tobacco products); WASH. REV. CODE ANN. § 82.24.010 to .900 (2004) (imposing licensing restrictions and taxes on cigarette distributors, along with penalties for violators); *id.* § 28A .210.310 (preventing tobacco use on school property).

⁶ *See* ALA. CODE § 13a-12-3 (Alabama); ALASKA STAT. §§ 11.76.100 *et seq.* & § 43.70.075 (Alaska); ARIZ. REV. STAT. ANN. § 13-3622, §§ 36-798.02 *et seq.* & § 42-3201 to -3202 (Arizona); ARK. CODE ANN. § 5-27-227 & § 26-57-214 *et seq.* (Arkansas); CAL. BUS. & PROF. CODE § 22950 *et seq.*, CAL. CODE REGS. tit. 17, §§ 6901 *et seq.*, and CAL. PENAL CODE § 308 *et seq.* (California); COLO. REV. STAT. ANN. §§ 24-35-503 *et seq.* & § 18-13-121 & § 30-15-401 (Colorado); CONN. GEN. STAT. ANN. §§ 12-314 *et seq.* & § 53-344 & § 12-286a & § 12-

implemented to prevent the consumption of alcohol by underage youth. See

<http://www3.madd.org/laws/> (describing and listing state alcohol enforcement statutes).

289a (Connecticut); DEL. CODE ANN. tit. 11, §§ 1116 *et seq.* (Delaware); D.C. CODE ANN. § 22-1320 & §§ 47-2401 *et seq.* & § 7-1731 (District of Columbia); FLA. STAT. ANN. §§ 569.11 *et seq.* & § 569.101 & § 569.075 *et seq.* (Florida); GA. CODE ANN. §§ 16-12-171 *et seq.* & § 48-11-4 (Georgia); HAW. REV. STAT. ANN. § 709-908 & § 328K-22 (Hawaii); IDAHO CODE § 39-5703 *et seq.* (Idaho); 720 ILL. COMP. STAT. 675/1 *et seq.* & 685/1 *et seq.* (Illinois); IND. CODE ANN. §§ 35-46-1-10.5 *et seq.* & § 16-41-37-9 (Indiana); IOWA CODE ANN. §§ 453A.1 *et seq.* (Iowa); KAN. STAT. ANN. §§ 79-3321 *et seq.* (Kansas); KY. REV. STAT. ANN. §§ 438.330 *et seq.* & §§ 438.310 *et seq.* (Kentucky); LA. REV. STAT. § 47:841 & § 26:793 & § 14:91.8 & § 26:915 & § 14:91.6 *et seq.* & § 26:909 (Louisiana); ME. REV. STAT. ANN. tit. 22, § 1551 *et seq.* & P. L. 1995, c. 470, §§ 17 and 19 (Maine); MD. CODE ANN., CRIM. LAW §§ 10-101 & -107 and MD. CODE ANN., COM. LAW § 11-5a-01 *et seq.* (Maryland); MASS. GEN. LAWS ANN. ch. 270, § 6 *et seq.* & ch. 94, § 307a & ch. 64C, § 10 & ch. 62C, § 67 & 940 C.M.R. 21.04 (Massachusetts); MICH. COMP. LAWS ANN. § 722.641 *et seq.* & § 750.42b *et seq.* (Michigan); MINN. STAT. ANN. § 609.685 *et seq.* & § 461.18 & § 325F.77 & § 461.12 (Minnesota); MISS. CODE ANN. § 97-32-21 & § 97-32-5 & § 97-32-13 & § 97-32-7 & § 97-32-15 & § 97-32-17 (Mississippi); MO. ANN. STAT. §§ 407.934 *et seq.* & §§ 407.929 *et seq.* & § 407.933 & § 407.928 (Missouri); MONT. CODE ANN. §§ 16-11-301 *et seq.* & § 45-5-637 (Montana); NEB. REV. STAT. §§ 28-1418 *et seq.* (Nebraska); NEV. REV. STAT. ANN. §§ 202.2493 *et seq.* & § 202.2485 (Nevada); N.H. REV. STAT. §§ 126-K:4 *et seq.* & § 78:12-d (New Hampshire); N.J. STAT. ANN. § 26:2F-7 & § 26:3A2-20.1 & §§ 2A:170-51.1 *et seq.* & 54:40A-4.1 (New Jersey); N.M. STAT. ANN. §§ 30-49-1 *et seq.* (New Mexico); N.Y. PUB. HEALTH LAW §§ 1399-aa *et seq.* & § 1399-cc & § 1399-ll & § 1399-bb & § 1399-gg (New York); N.C. GEN. STAT. §§ 14-313 *et seq.* (North Carolina); N.D. CENT. CODE §§ 57-36-25 *et seq.* & § 12.1-31-03 (North Dakota); OHIO REV. CODE ANN. §§ 2927.02 *et seq.* & § 2151.87 (Ohio); OKLA. STAT. ANN. tit. 37, §§ 600.6 *et seq.* & Title 68 § 1511, Title 63 § 1521 *et seq.*, and Title 21 § 1247 (Oklahoma); OR. REV. STAT. § 431.853 & § 163.575 & §§ 176.400 *et seq.* & § 419C.370 & §§ 431.840 *et seq.* (Oregon); 18 PA. CONS. STAT. ANN. §§ 6305 *et seq.* & 72 PA. CONS. STAT. ANN. §§ 201-A *et seq.* (Pennsylvania); R.I. GEN. LAWS §§ 11-9-13 *et seq.* (Rhode Island); S.C. CODE ANN. § 16-17-500 & § 12-21-660 (South Carolina); S.D. CODIFIED LAWS §§ 34-46-1 *et seq.* & §§ 26-10-20 *et seq.* (South Dakota); TENN. CODE ANN. §§ 39-17-1501 *et seq.* & § 39-17-1551 & § 47-18-2003 (Tennessee); TEX. PENAL CODE ANN. §§ 161.082 *et seq.* & §§ 161.252 *et seq.* & §§ 161.301 *et seq.* (Texas); UTAH CODE ANN. § 77-39-101 & § 26-42-103 & § 76-10-105 & § 76-10-104 & §§ 59-14-101 *et seq.* (Utah); VT. STAT. ANN. tit. 7, § 140 and §§ 1002 *et seq.* & tit. 40, § 1003 and 1997 Vt. Acts & Resolves 58, § 13 (Vermont); VA. CODE ANN. § 18.2-371.2 & § 15.2-2809 (Virginia); W. VA. CODE ANN. §§ 16-9A-2 *et seq.* & § 11-1 2-4a & § 21-3-19 (West Virginia); WIS. STAT. ANN. § 134.66 & § 48.983 (Wisconsin); WYO. STAT. ANN. §§ 14-3-301 *et seq.* (Wyoming). See <http://lungaction.org/reports/tobacco-control.html> (describing and listing state tobacco enforcement mechanisms).

The ATV sales ban proposed by Petitioners bears no resemblance to these comprehensive state laws and enforcement programs, and it is fallacious to attempt to draw such an analogy. The proposed ATV sales ban would not be “comprehensive,” would be difficult to enforce and easily evaded, would entail the single potential sanction of a civil penalty of up to \$8,000 per violation, would not extend to the actual use of adult-size ATVs by children, and – as CPSC staff has concluded – would not result in any meaningful reductions in ATV-related accidents involving children under 16. The most effective way to achieve such reductions is through the enactment and enforcement of comprehensive state ATV legislation governing the use of the vehicles by children under 16. The alcohol and tobacco studies and state laws cited by Petitioners, when properly considered, only reinforce this point.

The ATV Companies have long advocated state ATV safety legislation, to complement the industry’s private safety programs and initiatives. The ATV Companies renew their invitation to Petitioners and other interested parties to support the industry’s longstanding efforts to promote such state laws.

**3. The Requested Ban Would Entail Substantial
Costs In Terms Of Lost Utility.**

The Briefing Package points out that there has been a dramatic increase in the overall utility associated with ATVs since the expiration of the Consent Decrees. More people are purchasing and using these vehicles, and are maintaining and keeping them in service for longer periods.

In addition, the 2001 ATV Exposure Survey shows that 71 percent of drivers in ATV-owning households used ATVs for one or more non-recreational purposes. Of those who used ATVs for non-recreational purposes such as farming/ranching, other occupational use, or yard work/chores, about half drove ATVs for non-recreational purposes more than 50 percent of the

total driving time. Half of the drivers in ATV-owning households used ATVs for yard work and chores; more than 40 percent used them for farming or ranching; and 11 percent used them for other business or occupational purposes.

The 2001 ATV Exposure Survey found that approximately 73 percent of ATV-owning households own a single vehicle, and that there were an average of 2.4 ATV riders per owning household. This indicates that in approximately three-fourths of ATV-owning households, there is a single vehicle which is ridden by multiple persons. While this may mean that a single adult-size ATV is shared by a husband and wife, or a parent and child 16 or older, it may also include situations where a single adult-size vehicle is ridden by both a parent and a child under 16. This suggests that there may be situations in which a parent purchases a new adult-size ATV for use both by him or herself and by a child under 16. To the extent the requested ban applied to bar the sale of an ATV in such cases, adult users would lose the substantial benefits of owning and operating the vehicles.

Because the CPSC has no basis upon which to confirm and quantify the expected safety benefits of a possible ban regulation, it cannot compare them to the substantial lost utility costs such a regulation would entail. The Commission therefore is in no position to grant the Petition based upon the required finding that the expected benefits from such a ban bear a reasonable relationship to its cost.

4. The Requested Ban Would Not Represent The Least Burdensome Requirement For Reducing ATV-Related Risk Of Injury.

The requested ban regulation could not be adopted unless CPSC finds, based upon substantial evidence, that the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury. The critical impediment to this required finding is the continuing absence of any evidence that the requested ban would prevent or reduce risk of injury

to any greater degree than the ATV Companies' dealer monitoring programs with their threat of dealer termination in the event that a dealer attempts to sell an adult-size ATV for use by a child under 16. These programs, which constitute voluntary commitments by the ATV Companies subject to confirmatory monitoring by CPSC, clearly represent a less burdensome alternative than the requested ban.

In fact, as previously noted, it is the states – not CPSC – which have authority to regulate the use of ATVs and to set age limits which prohibit use of adult-size vehicles by children under 16. Working with ATV Companies to convince the states to adopt ATV legislation which imposes such age limits clearly represents another less burdensome alternative with respect to adult purchases of a single ATV for household use than the requested ban. CPSC therefore could not make the required finding that the requested ban imposes the least burdensome requirement which prevents or adequately reduces the risk of injury.

E. The Petitioners Themselves Now Concede The Importance Of State ATV Legislation.

The ATV Companies agree with the Briefing Package's suggestion that most children under 16 are lacking skills that would allow them "to safely operate ATVs *in all situations*". Briefing Package at 144 (emphasis added). That is why SVIA has continued to promote model state legislation that restricts these children to operating youth models (with maximum speed limiters) and requires that they wear helmets and protective gear, take safety training, and be supervised at all times by a parent or guardian.

SVIA's efforts have been instrumental in the enactment of state laws that prohibit the use of adult-size ATVs by children and establish other important safety requirements. For example, on April 7, 2005, Governor Bill Richardson of New Mexico signed a bill requiring children under the age of 18 to wear helmets and safety goggles and to complete a safety training course.

The law will also require (1) that an adult be present to supervise a rider under the age of 18, unless that rider has a motorcycle license, instructional permit or provisional driver's license; and (2) that a rider 10 and under must be on an appropriate-size ATV.⁷

In January 2004, West Virginia passed its first ATV safety legislation after almost ten years of lobbying by SVIA. The ATV legislation requires that all riders under age 18 must wear a helmet and complete an ATV rider awareness course. The legislation also prohibits (1) the carrying of passengers under age 18 unless certain requirements are met; and (2) the use of ATVs on certain roads. SVIA is continuing to support stronger ATV safety legislation in West Virginia.

The CPSC's actions focusing attention on the need for such legislation during regional ATV hearings in Morgantown and Albuquerque in 2003 greatly assisted the ultimately successful efforts of SVIA and other supporters in obtaining enactment of these laws in New Mexico and West Virginia.

SVIA is also working in Florida, Mississippi, North Carolina, South Carolina, and Washington to introduce and support passage of its model ATV safety legislation.

There is no question that adoption and effective enforcement of state age restrictions on ATV usage can significantly reduce the number of injuries and fatalities involving children. For example, in his March 22, 2005 written testimony, Dr. Heiden presented an analysis of the change that occurred in the proportion of ATV-associated fatalities in California for riders under 16 in the five years after enactment in 1990 of ATV legislation with minimum age and parental supervision requirements, relative to the five years before the law. The proportion of fatalities to

⁷ See Walter Rubel, *Richardson signs ATV safety standards bill*, Las Cruces Sun-News, Apr. 8, 2005.

children under 16 in California declined from 27 percent before the law to 15 percent after the legislation.

In addition, new analyses by Dr. Heiden of CPSC fatality and injury databases show that head injuries represented 56 percent of all reported fatalities and 23 percent of injuries requiring hospitalization. For all cases since 1999 in the CPSC fatality database where helmet-wearing status was known, and a head injury was reported, 87 percent of the decedents were not wearing helmets. In other words, nearly half of all ATV-related fatalities since 1999 have involved riders not wearing helmets who suffered head injuries. For hospitalized cases in the CPSC 2001 injury survey where helmet-wearing status was known and a head injury occurred, 83 percent of the injured parties were not wearing helmets. This means that 19 percent of all the hospitalized injury cases involved a head injury to a rider not wearing a helmet. The percentage of injuries where a helmet was not worn was 53 percent of all hospitalized injuries (those with head injuries as well as other types of injuries).

Dr. Heiden's helmet effectiveness research suggests that between 37 and 64 percent of fatalities and hospitalized injuries involving the head—which represent the most severe ATV-related injuries—could have been averted by helmet use in cases where one was not being worn. In addition, research on state seat belt laws indicates that helmet use can be increased as much as 40 percent through stronger and more consistently enforced state law requirements. It should be noted that this estimate of a potential 40 percent increase in helmet use reflects solely increased state law compliance, and does not include any other possible safety initiatives. A copy of the Heiden analysis is attached at Appendix B. It is important to note that no federal action by the Commission can substitute for the state police powers that would be the basis for stronger and more consistently enforced state law requirements.

As noted above, the ATV Companies, through SVIA, have worked for many years toward adoption of ATV legislation in numerous states. The industry welcomes the expression of support in Petitioner CFA's written testimony at the March 22 hearing for state efforts to adopt such legislation. This support is, in fact, consistent with Petitioners' reference to state alcohol and tobacco laws, which prohibit – at the state level – minors from purchasing or using these products. The ATV Companies have long contended that state regulation of ATV use, along with education and parental supervision, is the most promising approach to enhancing ATV safety.

The ATV Companies urge the Commission to make renewed efforts, in partnership with the ATV industry, the Petitioners and others, to encourage and support the enactment of state laws prohibiting the use of adult-size ATVs by children under 16. The Commission's efforts in this area are much more likely to have a beneficial effect in reducing ATV-related accidents involving children than the Petitioners' proposed federal ban.

III. CONCLUSION

In cooperation with the Commission, the ATV Companies have taken unprecedented steps as private companies to promote the safe and responsible use of their products. The ATV Companies will continue to fulfill their undertakings regarding the sale of adult-size ATVs for use by children under 16. At the same time, the Commission should consider the extent to which further reductions in ATV-related accidents involving children may be beyond the scope of reasonable actions that the Commission can take under federal law or that the ATV Companies can take as private companies. Although the ban requested by Petitioners is an additional potential federal remedy, it would have substantial costs, no demonstrable safety benefits, and little, if any, practical effect on the behavior of dealers or consumers. The most effective way to

achieve further meaningful reductions in children's injuries is instead through the enforcement of current state age restriction and helmet laws and the enactment of additional similar state laws.


For all these reasons, the Commission should accept the staff recommendation and deny the Petition.

Respectfully submitted,



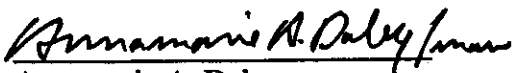
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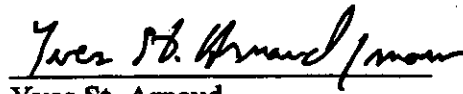
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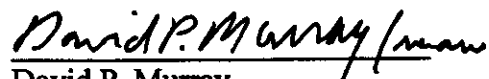
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APPENDIX A

APPENDIX B

**Potential Reductions in ATV-Related
Fatal and Non-fatal Head Injuries
from Upgraded State Safety Laws
on Helmet Usage**

by Edward J. Heiden

April 21, 2005

Introduction and Summary

Both the 1998 and 2005 CPSC briefing packages have highlighted the extent to which ATV-related fatalities involve one or more warned-against user behaviors, including lack of helmet use, driving on public roads, carrying passengers, and driving after using alcohol or drugs. However, these briefing packages have not contained any quantitative analysis that indicates the extent to which modifying these behaviors would contribute to reduced levels of fatal and non-fatal injuries. A particular issue of interest is the extent to which the prevalence of warned-against behaviors and related injuries can be reduced by improvements in state ATV safety laws.

We examined ATV helmet use patterns in the most current CPSC fatality and injury databases to estimate the potential benefits of reduced rates of warned-against behaviors (in terms of reduced numbers of fatal and non-fatal injuries) and determine the extent to which improvements in state ATV safety legislation could be expected to achieve these reductions. Helmet use was selected in part because the benefits of use are more specific (reduced head-related fatalities and injuries) and in part because there are a number of studies on the safety impact of helmet use both for ATVs and for other types of vehicles.

For this assessment, we have developed new tabulations from the most recent version of the CPSC fatality database and from the 2001 CPSC ATV injury survey that focus specifically on the relationship between helmet use and head-related fatalities and injuries. We have also reviewed the available safety literature on helmet use and on the impact of safety legislation and regulations on user behavior.

Key findings of interest are as follows:

1. New tabulations from the most recent version of the CPSC fatality database show that nearly half of all ATV-related fatalities resulted from fatal head injuries sustained by riders who were not wearing helmets. Non-fatal head injuries sustained by riders without helmets accounted for nearly 20 percent of all non-fatal injuries that resulted in hospitalization.
2. The single warned-against behavior of failing to wear a helmet is a substantial contributor to both ATV-related fatalities and severe injuries that require hospitalization.
3. Greg Rodgers' previous research on helmet effectiveness estimated that 42 percent of these fatalities and 64 percent of these non-fatal head injuries, including those that resulted in hospitalization, could potentially have been averted by helmet use.
4. Research on the relationship between state safety laws and seat belt use—the risk-

reducing behavior most comparable to helmet use for passenger vehicles—indicates that as much as 40 percent of user non-compliance with safety instructions can be eliminated through stronger and more consistently enforced state safety requirements.

The results of our analysis are summarized in Exhibits 1 and 2. Based on this analysis, it is likely that consistent state adoption and enforcement of ATV legislation requiring helmet use can be expected to result in substantial reductions in the numbers of fatal and non-fatal head injuries sustained by ATV riders—50 fatalities, more than 600 hospitalized injuries, and over 2,200 other ER-treated injuries—annually.

A More Detailed Look at Helmet Use in the ATV Fatality Database

As part of this analysis, we developed new tabulations of head-related injuries from the most recent version of the CPSC ATV fatality database, which includes reports on all ATV-related deaths known to the Commission as of year-end 2003. All deaths occurring since the beginning of 1999 (the first year of the new CPSC methodology) were examined to determine the body part related to the fatality and whether or not the victim was wearing a helmet at the time of the fatal accident. Because of a quirk in the coding of the new cases since 2001, the analysis was restricted to cases in which only one rider—whether driver or passenger—on the primary ATV involved was fatally injured. The analyzed cases represent 92 percent of all reported fatalities, and 94 percent of those involving head injuries, during the relevant time frame.

Summary tabulations are presented in Exhibit 3. Head injuries accounted for 56 percent of the nearly 2,000 fatality cases included in our analysis.¹ Among ATV drivers, the proportion of head injuries was 54 percent, while nearly two-thirds of passenger fatalities involved head injuries. Most strikingly, while 53-56 percent of drivers and passengers in the 2001 ATV exposure study reported wearing helmets, only 14 percent of ATV drivers and only six percent of passengers who sustained fatal head injuries were wearing a helmet at the time of the accident.

Combining the head injury and helmet use proportions, 48 percent—nearly half of all ATV fatalities since the beginning of 1999—involved head injuries sustained by riders who were not wearing helmets at the time of the accident. The extent to which these can be reduced depends on two factors—the effectiveness of helmets in reducing fatal head injuries and the ability of state safety laws to result in modified user behavior with respect to wearing helmets.

¹ The CPSC hazard coding system contains separate body part codes for eyeball, face, and mouth related injuries. These were not included in our tabulations of fatal head injuries.

A More Detailed Look at Helmet Use in the 2001 ATV Injury Survey Data

To extend the analysis to the larger category of non-fatal injuries, we developed new tabulations of head-related injuries and helmet use from the 2001 CPSC ATV injury survey data. We were able to identify 459 cases involving ATV drivers or passengers for which the body part affected could be determined.

Summary tabulations are presented in Exhibit 4. Head injuries accounted for 23 percent of the cases in which the injured party was hospitalized. Among those who were not hospitalized, the proportion of head injuries was nine percent. Of those participants whose helmet use was reported, only 17 percent of those who were hospitalized after sustaining head injuries were wearing helmets at the time of the accident. This proportion was nearly identical (16 percent) among those with head injuries who did not require hospitalization.

Combining the head injury and helmet use proportions, head injuries sustained by riders who were not wearing helmets at the time of the accident account for 19 percent of all non-fatal ATV injuries requiring hospitalization and eight percent of all non-fatal ATV injuries. As with fatalities, the extent to which these can be reduced depends on two factors—the effectiveness of helmets in reducing non-fatal head injuries and the ability of state safety laws to result in modified user behavior with respect to wearing helmets.

Safety Benefits of Helmet Use

Prior studies on motorcycle and ATV helmet use shed light upon its safety benefits. The role of helmets in significantly reducing motorcycle fatalities has long been recognized. Using data from 1982 to 1987, NHTSA has until recently estimated that wearing a helmet would reduce the chance of receiving a fatal head injury in an accident by 29 percent. More recently, however, there have been significant advances in motorcycle helmet materials and design that offer a greater degree of protection. In a recently released study, the NHTSA National Center for Statistics and Analysis (NCSA) reviewed more recent fatality data and concluded that the effectiveness rate for helmet use would avert 37 percent of all fatal injuries sustained by those who do not wear them. Offsetting this increased protection from more effective helmets is the fact that, according to the study, helmet use has declined from 71 percent to 58 percent in the past 10 years, as several states have repealed laws requiring use of helmets for motorcycle riders.

In addition, Greg Rodgers of CPSC has previously examined the potential benefits of helmet use for ATV riders. In a 1990 article, Rodgers uses data from the 1989 exposure and injury studies and a then-current version of the fatality database to estimate logistic regression models for fatal and non-fatal head injuries.² As an initial step in his analysis, Rodgers calculated the probability that an injured rider would sustain a fatal injury, and thence found that

² Rodgers, Gregory B., "The Effectiveness of Helmets in Reducing All-Terrain Vehicle Injuries and Deaths," *Accid. Anal. & Prev.*, 1990, Vol. 22, No. 1, pp. 47-58.

helmet use is associated with a **42 percent reduction in fatality risk from accidents that involve an injury**. This finding is supported by simple tabulation of the fatality database records—about 52 percent of helmeted drivers in Rodgers' sample died from head injuries, but 76 percent of those not wearing helmets died from head injuries. Because Rodgers' research relates specifically to ATVs, we used the 42-percent estimate to project benefits from increased helmet use in our analysis.

Although comparable studies on the potential for non-fatal injury reduction from helmet use for motorcycles or other products were not available, Rodgers estimated the probability that an injured rider would sustain a non-fatal injury, and thence found that helmet use is associated with a **64 percent reduction in the risk that a non-fatal injury will involve the head** in his 1990 study. We used this estimate to project reductions in non-fatal head injuries generally, and for those requiring hospitalization specifically.

The Impact of State Safety Requirements on User Compliance Rates

Developing support for adopting more widespread state ATV safety laws involving warned-against behavior requires demonstrating that such laws can meaningfully influence user compliance rates. The best evidence on this issue is available from NHTSA studies of seat belt use rates by state. In its most recent report comparing 2002 and 2003 rates at the state level, the NCSA noted that there was an 11-percent differential in the average rate of seat belt use between states that have "primary" seat belt laws—ones that authorize police officers to stop motorists not wearing belts without observing another infraction—and those that have "secondary" laws, in which officers may only cite motorists stopped for other reasons.³

This comparison must be refined in two ways to be relevant for analysis purposes. First, in order to be correct, the baseline needs to be stated in terms of the percentage of those who do not comply with safety instructions, rather than the overall universe of riders or drivers. Nationally, seat belt use rates are much higher than those for ATV helmet use. NHTSA estimates that 79 percent of adults wore belts in June 2003, up from 75 percent in 2002, 71 percent in 2000, and 65 percent in 1998. Viewed through the proper perspective of *reduction in non-compliance*, non-compliance with seat belt use instructions has declined by **40 percent** (from 35 percent to 21 percent of all adults) during the most recent five-year period. This reduction in non-compliance, which NCSA defines as the *conversion rate*, is the best measure of legislative effectiveness, and has been adopted for use in our analysis here.

Second, it should be noted that many states do not have ATV helmet use requirements that are analogous to even the secondary seat belt laws in effect in all but one of the 29 states that

³ One state—New Hampshire—has no seat belt requirement for adults. Its 50 percent estimated seat belt use rate is far below even the lowest rate (64 percent) in any of the other states with secondary seat belt laws. The proportion of New Hampshire drivers who do not wear a seat belt is nearly double that of the state (Louisiana) with the lowest use rate among the 21 states (and Washington, DC) with primary seat belt laws.

do not have primary laws. According to the latest available SVIA summary of state ATV safety laws, 26 states do not have helmet use laws; 24 have requirements whose provisions vary considerably—many of which could be strengthened to improve the rate of non-compliance. It would be reasonable to expect that the percentage reduction in non-compliance from new safety legislation in states without an ATV helmet law would exceed that achievable in states that already have some type of requirement(s) in effect, though significant gains could be achieved in the latter case as well.

Conclusion

The analysis presented in this report demonstrates that widespread state adoption and enforcement of ATV legislation requiring helmet use could potentially reduce the numbers of fatal and non-fatal head injuries sustained by ATV riders by 50 fatalities, more than 600 non-fatal injuries requiring hospitalization, and over 2,200 other non-fatal injuries annually. While we have not extended this analysis to examine the impact of other specific warned-against behaviors on fatal and non-fatal injury rates, we believe that this analysis would confirm that other improvements in state safety laws could also be expected to make meaningful reductions in the overall level of risk associated with use of ATVs.

Exhibit 1
Potentially Avertable ATV-Related Head Injuries
 (Annual Reductions at 2001 Fatality, Injury Levels)

	Fatal Injuries	Non-fatal Injuries		
		Hospitalized	Other	Combined
Total Injuries in 2001	609	13,500	96,600	110,100
% Head Injuries*	56%	23%	11%	12%
Head-Related Injuries	338	3,060	10,340	13,400
% Helmet Worn	13%	17%	16%	17%
Head-Related Injuries				
w/ Helmet Use	42	523	1,706	2,229
w/o Helmet Use	296	2,537	8,634	11,171
% of Injuries Potentially Averted				
w/ Helmet Use	42%	64%	64%	64%
Number of Potentially Avertable				
Head Injuries	124	1,624	5,526	7,150

* Head injuries coded as bodypart 75; face, eye, and mouth injuries are not included in these totals.

Exhibit 2
Potential Safety Benefits from Increased ATV Helmet Use
 (Annual Reductions at 2001 Fatality, Injury Levels)

	Fatal Injuries	Non-fatal Injuries		
		Hospitalized	Other	Combined
Number of Potentially Avertable Head Injuries*	124	1,624	5,526	7,150
% Reduction in Non-Compliance from Upgraded Safety Laws	40%	40%	40%	40%
Projection Reduction in Injuries from Upgraded Safety Laws	50	650	2,210	2,860

* Head injuries coded as bodypart 75; face, eye, and mouth injuries are not included in these totals.

Exhibit 3
Helmet Use in Current CPSC ATV Fatality Database, 1999-2003

	Total	Drivers*	Passengers*	Combined*	% Total
Reported Fatalities	2,123	1,751	198	1,949	92%
Head Injuries**	1,108	916	127	1,043	94%
Injury Reported	1,996	1,690	192	1,882	94%
Head % of Known	56%	54%	66%	55%	
Fatal Head Injuries	1,108	916	127	1,043	94%
Helmet Worn	111	95	8	103	93%
Helmet Not Worn	734	586	133	719	98%
% with Helmet Worn	13%	14%	6%	13%	
% of All Fatalities Involving Head Injuries					
Helmet Worn	7%	8%	4%	7%	
Helmet Not Worn	48%	47%	62%	48%	

* Driver and passenger injury and helmet use cannot be determined in multiple fatality incidents.

** Head injuries coded as bodypart 75; face, eye, and mouth injuries are not included in these totals.

Exhibit 4
Helmet Use in the 2001 CPSC ATV Injury Database

Injury Survey Counts	Total	ATV Driver or Passenger Injuries			% Total
		Hospitalized	Other	Combined	
All Injuries	21,384	2,576	18,084	20,660	97%
Head Injuries*	2,280	597	1,649	2,246	99%
Other Injuries	19,104	1,979	16,435	18,414	96%
Head % of Known	11%	23%	9%	11%	
Head Injuries	2,280	597	1,649	2,246	
Helmet Worn		102	209	311	
Helmet Not Worn		495	1,058	1,553	
% with Helmet Worn		17%	16%	17%	
% of All Injuries Involving Head Injuries					
Helmet Worn		4%	2%	2%	
Helmet Not Worn		19%	8%	9%	

* Head injuries coded as bodypart 75; face, eye, and mouth injuries are not included in these totals.

Stevenson, Todd A.

AN 26

From: Lindsey Johnson [lindsey@pirg.org]
Sent: Friday, April 22, 2005 7:24 PM
To: Stevenson, Todd A.
Subject: ATV Petition Briefing

U.S. PIRGs comments on the ATV Petition Briefing are attached. Thank you for your consideration.

Regards,
Lindsey Johnson
Consumer Advocate
U.S. Public Interest Research Group (U.S. PIRG)
202-546-9707, Ext. 349



JS PIRG Comments
on ATV Briefi...

ATV Briefing Package
Petition No. CP-02-4/HP-02-1

**Comments of the United States Public Interest Research Group on
the Consumer Product Safety Commission Staff Briefing Package
and Recommendation (February 2005)**

On behalf of the State Public Interest Research Groups, we submit these comments on the briefing package CPSC staff prepared in response to a petition filed by U.S. PIRG and other consumer groups in August 2002. U.S. PIRG is the national lobbying office for the non-profit, non-partisan State Public Interest Research Groups (PIRGs). The State PIRG's have been active on ATV safety issues since the 1980s, and we are extremely concerned about the CPSC staff's recommendation to deny our petition to ban the sale of adult sized ATV's for use by children 16 years old and younger.

More than one hundred children a year have died in ATV-related accidents for the past four years. In 2003 alone, 111 children that were not even old enough to get a driver's license in most states died in ATV-related accidents. We are concerned that the ATV Action Plans currently in place do not do enough to protect children from being killed or injured on these vehicles, and we urge the CPSC to reconsider our petition and develop additional measures to reduce ATV-related deaths and injuries.

Existing ATV Regulations are Insufficient

U.S. PIRG, the Consumer Federation of America and seven other consumer groups filed the petition because the measures taken by the CPSC to reduce injuries and deaths from ATV related accidents have not been sufficient. After a consent decree imposing certain safety requirements on ATV manufacturers and sellers (such as warnings at the time of purchase and warning labels on ATVs) expired in 1998, the CPSC entered into voluntary, company-specific agreements known as ATV Action Plans. These action plans include many of the recommendations included in the consent decree, but the Commission does not have ability to enforce them. In addition, the companies with ATV Action Plans are free to pull out of the agreements with 60 days notice. The provision requiring companies to recommend against the sale of adult-size ATVs for use by children under sixteen is only implemented at the discretion of the manufacturers.

Even more problematic than the inadequate enforceability of these Action Plans is the fact that they only cover the specific companies what executed them with the Commission (Honda, Polaris, Suzuki, Yamaha, Kawasaki, and Artic Cat). There are a number of other companies that manufacture, sell or import ATVs for the U.S. market that have no safety agreement of any kind with the CPSC.

U.S. PIRG and our co-petitioners believe that the ATV action plans have failed to reduce the number and severity of ATV related deaths and injuries to children. Only a federal ban on the sale of adult-size ATVs would impact the every ATV company doing business in the United States.

The CPSC Staff Analysis Provides Support for the Federal Ban

By and large, the CPSC staff recognizes the growing problem of children incurring serious injuries and death on adult-size ATVs in their briefing package. However, the staff recommends against implementing a regulation that would not prevent all children from riding ATV's that they do not have the ability to drive safely.

The staff concedes "a federal sales ban might send a message to some parents about the importance of following the age recommendations," (ATV Briefing Package, p 15) but then unfairly discounts the value of the warning by pointing to a lack of research to prove that the federal warning would alter consumer behavior. However, their own conclusions suggest that federal requirements in the past (the legally binding consent decree that expired in 1998) did have a perceivable impact on the behavior of the ATV industry. When the consent decree was in place, the ATV industry had a greater willingness to comply with the requirement to inform parents that children should not ride adult-size ATVs.

In addition, the CPSC staff makes contradictory arguments about the potential impacts of the ban. First, the staff argues that a federal sales ban would not impact consumer behavior, and then staff argues that a federal sales ban would reduce the ability of children to ride ATVs for "non-recreational activities, especially in rural or farming communities." The staff further explains "a federal sales ban could reduce the ability of children to assist in these tasks, resulting in a cost to the family." (ATV Briefing Package, p 19) The CPSC staff repeatedly states that the CPSC cannot regulate the product after it is sold, and argues that a ban would not necessarily affect riding behavior.

A federal warning would less influence a consumer accustomed to using ATVs for non-recreational activities than a first time buyer purchasing an ATV for recreational use. For example, a consumer purchasing another ATV for use on their family farm would be very familiar with ATVs, and be less inclined to adhere to the federal warning. First time buyers have the least experience with ATVs, and would most benefit from stronger, additional warnings about the extreme dangers associated with children riding adult-size ATVs.

The Costs and Benefits of a Federal Ban Must Be Explored in Greater Detail

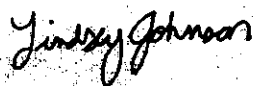
The ATV Briefing Package contains a discussion about the potential costs and benefits associated with the implementation of a federal ban on the sale of adult-size ATVs to children. The staff briefly acknowledges the potential monetary benefits of reducing sales of adult sized ATVs to youth. However, the staff only calculates the benefit in terms of injury and fatality costs per child driver annually. There is no calculation of the societal benefit of reducing the number of young people that die each year on adult-size ATVs. Most importantly, there is no estimated benefit of the reduced cost to our healthcare system if the ban prevented consumers from buying adult-size ATVs for children. Numerous studies describing the economic costs of ATV related injuries and deaths have been written, but none were included in the CPSC staff analysis of potential benefits. For example, a study published in the Journal of Pediatric Surgery in 1998 reviewed five-years (1991-1995) of data about children injured or killed in ATV related accidents. According to the study, the estimated total hospitalization cost for 218 child patients hospitalized over

the five-year period was \$1,918,400.¹ Another study from the Center for Rural Emergency Medicine at West Virginia University found that "the average annual comprehensive economic loss resulting from these deaths (fatal ATV-related injuries) in West Virginia from 1990 through 1999 was estimated to be between \$10 million and \$34.2 million."²

A more comprehensive accurate cost-benefit analysis of the federal ban would include data such as that from the journal articles cited above. Instead the CPSC staff discusses the "non-monetary costs (to parents and children) in foregone benefits if they were not able to purchase and use the ATV models they preferred." (ATV Briefing Package, p 18) Foregone benefits should not be valued over potential lives saved, or millions of dollars in potential health cost reductions.

Although U.S. PIRG has a long-standing respect for the CPSC staff, we strongly disagree with the CPSC staffs' recommendation to deny Petition No. CP-02-4/HP-02-1, and urge the CPSC to ban the sale of adult sized ATV's for children's use.

Respectfully Submitted,



Lindsey Johnson
U.S. Public Interest Research Group

¹ Lister DG, Carl J 3rd, Morgan JH 3rd, Denning DA, Valentovic M, Trent B, Beaver BL. "Pediatric all-terrain vehicle trauma: a 5-year statewide experience." Journal of Pediatric Surgery July 1998. Department of Surgery, Marshall University School of Medicine, Huntington, West Virginia 25701-3655, USA.

² Helmkamp JC, "Estimated annual cost of all terrain vehicle-related deaths in West Virginia: 1990-1999" West Virginia Medical Journal January-February 2002. Center for Rural Emergency Medicine, West Virginia University, Morgantown, USA.